

CITY OF MUSKEGON

CITY COMMISSION MEETING

APRIL 10, 2018 @ 5:30 P.M.

**MUSKEGON CITY COMMISSION CHAMBERS
933 TERRACE STREET, MUSKEGON, MI 49440**

AGENDA

- ☐ **CALL TO ORDER:**
- ☐ **PRAYER:**
- ☐ **PLEDGE OF ALLEGIANCE:**
- ☐ **ROLL CALL:**
- ☐ **HONORS AND AWARDS:**
- ☐ **INTRODUCTIONS/PRESENTATION:**
- ☐ **CITY MANAGER'S REPORT:**
- ☐ **CONSENT AGENDA:**
 - A. Approval of Minutes** City Clerk
 - B. Rezoning Several Properties** Planning & Economic Development
SECOND READING
 - C. Amendment to the Zoning Ordinance – Wireless Communication Service Facilities** Planning & Economic Development
SECOND READING
 - D. 2018/19 Water Treatment Sodium Hypochlorite Bids** Department of
Public Works – Water Filtration
 - E. City Hall Carpet Purchase** Finance & Administrative Services
 - F. Heritage Square Commons II – Construction Loan** City Manager
 - G. Letter of Understanding Between the County and City for Reimbursement of Architectural Services for Proposed Convention Center** City Manager
 - H. Paving of Parking Lot, Jefferson at Western** DPW – Engineering
 - I. City Hall Irrigation Replacement** DPW

J. Community Relations Committee Resignations and Appointments City Clerk

- ☐ **PUBLIC HEARINGS:**
- ☐ **COMMUNICATIONS:**
- ☐ **UNFINISHED BUSINESS:**
- ☐ **NEW BUSINESS:**
- ☐ **ANY OTHER BUSINESS:**
- ☐ **PUBLIC PARTICIPATION:**
 - ▶ **Reminder: Individuals who would like to address the City Commission shall do the following:**
 - ▶ Fill out a request to speak form attached to the agenda or located in the back of the room.
 - ▶ Submit the form to the City Clerk.
 - ▶ Be recognized by the Chair.
 - ▶ Step forward to the microphone.
 - ▶ State name and address.
 - ▶ Limit of 3 minutes to address the Commission.
 - ▶ (Speaker representing a group may be allowed 10 minutes if previously registered with City Clerk.)
- ☐ **CLOSED SESSION:**
- ☐ **ADJOURNMENT:**

ADA POLICY: THE CITY OF MUSKEGON WILL PROVIDE NECESSARY AUXILIARY AIDS AND SERVICES TO INDIVIDUALS WHO WANT TO ATTEND THE MEETING UPON TWENTY-FOUR HOUR NOTICE TO THE CITY OF MUSKEGON. PLEASE CONTACT ANN MARIE MEISCH, CITY CLERK, 933 TERRACE STREET, MUSKEGON, MI 49440 OR BY CALLING (231) 724-6705 OR TTY/TDD DIAL 7-1-1- TO REQUEST A REPRESENTATIVE TO DIAL (231) 724-6705.

Date: April 3, 2018
To: Honorable Mayor and City Commissioners
From: Ann Marie Meisch, City Clerk
RE: Approval of Minutes

SUMMARY OF REQUEST: To approve minutes of the March 27, 2018 Regular Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

CITY OF MUSKEGON

CITY COMMISSION MEETING

MARCH 27, 2018 @ 5:30 P.M.

**MUSKEGON CITY COMMISSION CHAMBERS
933 TERRACE STREET, MUSKEGON, MI 49440**

MINUTES

The Regular Commission Meeting of the City of Muskegon was held at City Hall, 933 Terrace Street, Muskegon, MI at 5:30 p.m., Tuesday, March 27, 2018. Pastor Matt Sharpe, Evanston Avenue Baptist, opened the meeting with prayer, after which the Commission and public recited the Pledge of Allegiance to the Flag.

ROLL CALL FOR THE REGULAR COMMISSION MEETING:

Present: Mayor Stephen J. Gawron, Vice Mayor Eric Hood, Commissioners Ken Johnson, Byron Turnquist, Willie German, Jr., and Dan Rinsema-Sybenga, City Manager Frank Peterson, City Attorney John Schrier, and City Clerk Ann Meisch.

Absent: Commissioner Debra Warren

PRESENTATION: Representatives from Williams & Works and from Nederveld presented the City Commission the Imagine Muskegon Lake Final Plan Review. The representatives covered the guiding principles and reviewed the plan to sustain, advance, connect, and convene the City of Muskegon, focusing on the waterfront districts.

2018-19 CONSENT AGENDA:

A. Approval of Minutes City Clerk

SUMMARY OF REQUEST: To approve minutes of the March 12, 2018 Worksession Meeting and the March 13, 2018 Regular Meeting.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval of the minutes.

B. Special Event Liquor License – Cole’s Anniversary Party City Clerk

SUMMARY OF REQUEST: The Muskegon City Clerk’s office has partnered with Cole’s Bakery to hold a community party on May 26, 2018, celebrating their 75th Anniversary this year and is seeking City Commission approval to apply for a license for Beer and Wine sales.

FINANCIAL IMPACT: \$50 permit from the State for every date requested and \$75 bond.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the request.

C. Special Event Liquor License – Taste of Muskegon

City Clerk

SUMMARY OF REQUEST: The Muskegon City Clerk's office is spearheading the Taste of Muskegon on Friday, June 15 and Saturday, June 16 this year and is seeking City Commission approval to apply for a license for Beer, Wine, and Spirit sales during the two-day event.

FINANCIAL IMPACT: \$50 permit from the State for every date requested and \$75 bond.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the request.

D. Fireworks Display Permit for Heritage Landing

City Clerk

SUMMARY OF REQUEST: Night Magic is requesting approval of a fireworks display permit for July 4, 2018, at Heritage Landing. The fire Marshall will inspect the fireworks on the day of the event.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval contingent on inspection of the fireworks and approval of insurance.

E. Fireworks Display Permit for Muskegon Country Club

City Clerk

SUMMARY OF REQUEST: Melrose Pyrotechnics, Inc. is requesting approval of a fireworks display permit for July 3, 2018, at the Muskegon Country Club, 2801 Lakeshore Drive. The fire Marshall will inspect the fireworks on the day of the event.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval contingent on inspection of the fireworks and approval of insurance.

F. 123 Net Unilateral METRO Act Permit

Engineering

SUMMARY OF REQUEST: Approve the request for a permit from 123 Net and authorize the Mayor to sign the permit.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approve the permit and sign the documents.

Motion by Commissioner Rinsema-Sybenga, second by Vice Mayor Hood, to approve the consent agenda as presented, except items G & H.

ROLL VOTE: Ayes: German, Rinsema-Sybenga, Turnquist, Johnson, Gawron, and Hood

Nays: None

MOTION PASSES

2018-20 ITEMS REMOVED FROM CONSENT AGENDA:

G. Aggregates, Highway Maintenance Materials and Concrete Department of Public Works

SUMMARY OF REQUEST: Award supply of Calcium Chloride 38% (road brine) and 32% (winter salting) to Great Lakes Chloride

Award bid to supply bituminous products (Base and Top) to Asphalt Paving, Inc.

Award bid to supply Sylvox patching material to Unique Paving Materials

Award bid to supply AE-90 Asphalt Emulsions to Michigan Paving Materials

Award bid for crack sealant to Sherwin Industries.

Award bid to supply H1/32FA limestone chip blend to Verplank Trucking Co

Award bid to supply road slag to Yellow Rose Transport

Award bid to supply road gravel to Yellow Rose Transport

Award bid to supply 2NS sand to Yellow Rose Transport

Award bid to supply screened top soil to Accurate Excavators

Award bid to supply Fill Sand to Accurate Excavators

Award bid to supply 7-sack mix concrete to Port City Redi-Mix

FINANCIAL IMPACT: \$472,397.00

BUDGET ACTION REQUIRED: None, funds appropriated in several budgets.

STAFF RECOMMENDATION: Recommend approval of bids as outlined in Summary of Request.

Motion by Commissioner Johnson, second by Commissioner German, to approve the bids as outlined in the summary of request.

ROLL VOTE: Ayes: Rinsema-Sybenga, Turnquist, Johnson, Gawron, Hood, and German

Nays: None

MOTION PASSES

H. Lakeshore Drive Preliminary and Construction Engineering Department of Public Works

SUMMARY OF REQUEST: Authorize staff to enter into an agreement with Prein & Newhof for preliminary and construction engineering services related to the reconstruction and street-scaping of Lakeshore Drive from McCracken to Laketon.

A request for proposals was advertised on February 16, 2018, with evaluation criteria as follows: understanding of the project and challenges, method of approach to the project, applicable experience, time and effort, and accessibility of the firm to City staff. Our intent is to select a consultant based on qualifications and negotiate the cost for work. Six proposals were received and reviewed independently by an engineering staff member and the director. Both reviewers selected Prein & Newhof as the top ranked firm.

FINANCIAL IMPACT: \$390,000 for engineering services to be covered by the major street fund.

BUDGET ACTION REQUIRED: Adjust engineering costs in third quarter reforecast.

STAFF RECOMMENDATION: Authorize staff to enter into an agreement with Prein & Newhof for engineering services related to the reconstruction and street-scaping of Lakeshore Drive from McCracken to Laketon.

Motion by Commissioner Johnson, second by Commissioner Rinsema-Sybenga, to authorize staff to enter into an agreement with Prein & Newhof for engineering services related to the reconstruction and street-scaping of Lakeshore Drive from McCracken to Laketon.

ROLL VOTE: Ayes: Turnquist, Johnson, Gawron, Hood, German, and Rinsema-Sybenga

Nays: None

MOTION PASSES

2018-21 NEW BUSINESS:

A. Concurrence with the Housing Board of Appeals Notice and Order to Demolish the Following: Public Safety

425 Octavius Street

609 Mulder Street

955 Turner Avenue

1317 7th Street

1768 Wood Street

1814 Dyson

1699 Pine Street

SUMMARY OF REQUEST: This is to request that the City Commission concur with the findings of the Housing Board of Appeals that the structures are unsafe, substandard, a public nuisance and that they be demolished within 30 days. It is further requested that administration be directed to obtain bids for the demolition of the structures and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder or staff may issue infraction tickets to the owner, agent or responsible party if they do not demolish the structure.

FINANCIAL IMPACT: General Funds and some Fire Escrow funds.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To concur with the Housing Board of Appeals decision to demolish.

Motion by Commissioner German, second by Commissioner Johnson, to concur with the Housing Board of Appeals decision to demolish.

ROLL VOTE: Ayes: Johnson, Gawron, Hood, German, Rinsema-Sybenga, and Turnquist

Nays: None

MOTION PASSES

B. Request to Amend the Planned Unit Development (PUD) at 1161 W. Southern Avenue Planning & Economic Development

SUMMARY OF REQUEST: Request to amend the PUD at 1161 W Southern Ave to demo the former gymnasium and to expand the parking lot, by Avasure Properties, LLC. The project also includes moving the playground at the corner of Davis/Southern to south of the building, next to the new urban farm to be located on site.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends approval of the PUD amendment with the condition that all future parking expansions be approved by staff, with up to 93 spaces allowed on site.

COMMITTEE RECOMMENDATION: The Planning Commission approved a motion to amend the PUD, with the condition that all future parking expansions be approved by staff, with up to 93 spaces allowed on site. The motion was

approved 8-0, with one member absent.

Motion by Commissioner Johnson, second by Commissioner German, to approve the PUD amendment with the condition that all future parking expansions be approved by staff, with up to 93 spaces allowed on site.

ROLL VOTE: Ayes: Gawron, Hood, German, Rinsema-Sybenga, Turnquist, and Johnson

Nays: None

MOTION PASSES

C. Request to Amend the Planned Unit Development (PUD) at 1670 E. Sherman Boulevard Planning & Economic Development

SUMMARY OF REQUEST: Request to amend the Planned Unit Development at 1670 E Sherman Blvd to utilize the building as a medical office that provides urgent care, occupational medicine and radiology, by Mercy Health Partners.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends approval of the PUD with the condition that a stop sign and bar be installed at the end of the Panera Bread drive thru.

COMMITTEE RECOMMENDATION: The Planning Commission approved a motion to amend the PUD as proposed, with the condition that a stop sign and bar be installed at the end of the Panera Bread drive thru. The motion was approved 8-0, with one member absent.

Motion by Vice Mayor Hood, second by Commissioner Johnson, to approve the PUD with the condition that a stop sign and bar be installed at the end of the Panera Bread drive thru.

ROLL VOTE: Ayes: Hood, German, Rinsema-Sybenga, Turnquist, Johnson, and Gawron

Nays: None

MOTION PASSES

D. Rezoning Several Properties Planning & Economic Development

SUMMARY OF REQUEST: Staff-initiated request to rezone 1814 Dyson St, 1824 Dyson St, 1831 Dyson St and 1828 Jarman St from B-2, Convenience and Comparison Business District to R-2, Medium Density Single Family Residential District. Also to rezone 1813 Dyson St from R-1, Low Density Single Family Residential District to R-2, Medium Density Residential District. Also to rezone 1808 McIlwrath St, 1814 McIlwrath St, and 1825 Jarman St from B-4, General Business District to R-2, Medium Density Single Family Residential District.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends approval of the rezonings.

COMMITTEE RECOMMENDATION: The Planning Commission voted 8-0 in favor of recommending approval of the rezonings.

Motion by Commissioner Rinsema-Sybenga, second by Commissioner Johnson, to approve the rezonings.

ROLL VOTE: Ayes: German, Rinsema-Sybenga, Turnquist, Johnson, Gawron, and Hood

Nays: None

MOTION PASSES

E. Amendment to the Zoning Ordinance – Wireless Communication Service Facilities Planning & Economic Development

SUMMARY OF REQUEST: Staff-initiated request to amend Section 2321 of the zoning ordinance to expand the overlay district to allow Wireless Communication Service Facilities at 1800 Peck St (Marsh Field) and 2375 Beach Street (Water Filtration Plant). Staff has prepared two options for the Water Filtration Plant location and is requesting that the Commission select one of them.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the zoning ordinance amendment, with option one for the Water Filtration Plant Location.

COMMITTEE RECOMMENDATION: The Planning Commission tabled the request at their December 14, 2017 meeting over concerns about the Water Filtration Plant location. At their March 15, 2018 meeting, they approved a motion 8-0 to recommend approval of the request to expand the overlay district, with option one for the Water Filtration Plant site.

Motion by Vice Mayor Hood, second by Commissioner Johnson, to approve the the zoning ordinance amendment, with option one for the Water Filtration Plant.

ROLL VOTE: Ayes: German, Rinsema-Sybenga, Turnquist, Johnson, Gawron, and Hood

Nays: None

MOTION PASSES

F. Purchase of Property for Industrial Park Expansion Planning & Economic Development

SUMMARY OF REQUEST: The City of Muskegon is in need of industrial development but lacks readily available land to meet the needs of today's industrial end users. Muskegon has been working very hard to attract new industrial end users to our community, however, because we are an older land-locked city, we lack in cohesive developable land beyond 2-3 acre sites. City staff have finalized terms to purchase approximately 22.7 acres of land adjacent to the Port City Industrial Park and are requesting authorization to purchase the land for economic development purposes (expansion of the industrial park).

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Authorize staff to execute purchase agreement for 2420 Remembrance Drive (PPN 24-134-300-0001-00) consisting of approximately 22 acres.

Motion by Commissioner Johnson, second by Vice Mayor Hood, to authorize staff to execute a purchase agreement for 2420 Remembrance Drive, consisting of approximately 22 acres.

ROLL VOTE: Ayes: Rinsema-Sybenga, Turnquist, Johnson, Gawron, Hood, and German

Nays: None

MOTION PASSES

ANY OTHER BUSINESS: Commissioner German would like to have a report from the Water Filtration Plant for the next meeting.

PUBLIC PARTICIPATION: Comments were received from the public.

2018-22 CLOSED SESSION:

A. Collective Bargaining

Motion by Commissioner Johnson, second by Vice Mayor Hood, to go into closed session for the purpose of discussion of collective bargaining.

ROLL VOTE: Ayes: Johnson, Gawron, Hood, German, Rinsema-Sybenga, and Turnquist

Nays: None

MOTION PASSES

ADJOURNMENT: The City Commission meeting adjourned at 8:35 p.m.

Respectfully Submitted,

Ann Marie Meisch, City Clerk

Commission Meeting Date: April 10, 2018

Date: April 5, 2018
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Rezoning Several Properties - SECOND READING

SUMMARY OF REQUEST:

Staff-initiated request to rezone 1814 Dyson St, 1824 Dyson St, 1831 Dyson St and 1828 Jarman St from B-2, Convenience and Comparison Business District to R-2, Medium Density Single Family Residential District. Also to rezone 1813 Dyson St from R-1, Low Density Single Family Residential District to R-2, Medium Density Residential District. Also to rezone 1808 McIlwrath St, 1814 McIlwrath St, and 1825 Jarman St from B-4, General Business District to R-2, Medium Density Single Family Residential District.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends approval of the rezonings.

COMMITTEE RECOMMENDATION:

The Planning Commission voted 8-0 in favor of recommending approval of the rezonings.

PLANNING COMMISSION PACKET EXCERPT

FEBRUARY 15, 2018

SUMMARY

1. The Muskegon County Land Bank owns the home at 1814 Dyson St, which is improperly zoned for business uses. They have requested a rezoning to residential so that they can use grant funding to demo the house. Staff also noted several other properties in the area that appear to be improperly zoned. All of these properties are either used as residential homes or are vacant residential lots. Having them zoned as business can make it difficult the home difficult to sell, refinance or rebuild in the event of a disaster.
2. Notice was sent to all property owners/tenants within 300 feet of all of these properties. At the time of this writing, staff had received several calls from neighbors who had questions about the rezoning's, but were all in favor after discussions.

Properties to be Rezoned



1824 Dyson



1814 Dyson



1828 Jarman



1831 Dyson



1825 Jarman



1814 McIlwrath



1808 McIlwrath



1813 Dyson



CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. _____

An ordinance to amend the zoning map of the City to provide for a zone change for several properties

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

The zoning map of the City of Muskegon is hereby amended to change the zoning for several properties (see map).

This ordinance adopted:

Ayes: _____

Nays: _____

Adoption Date: _____

Effective Date: _____

First Reading: _____

Second Reading: _____

CITY OF MUSKEGON

By: _____

Ann Meisch, MMC
City Clerk

CERTIFICATE (Rezoning of several properties)

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 10th day of April, 2018, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted and public notice was given pursuant to and in full compliance with the Michigan Zoning Enabling Act, Public Acts of Michigan No. 33 of 2006, and that minutes were kept and will be or have been made available as required thereby.

DATED: _____, 2018

Ann Meisch, MMC
Clerk, City of Muskegon

Publish: Notice of Adoption to be published once within ten (10) days of final adoption.

CITY OF MUSKEGON
NOTICE OF ADOPTION

Please take notice that on March 27, 2018, the City Commission of the City of Muskegon adopted an ordinance amending the zoning map to provide for the change of zoning for several properties (see map).

Copies of the ordinance may be viewed and purchased at reasonable cost at the Office of the City Clerk in the City Hall, 933 Terrace Street, Muskegon, Michigan, during regular business hours.

This ordinance amendment is effective ten days from the date of this publication.

Published _____, 2018

CITY OF MUSKEGON

By _____

Ann Meisch, MMC
City Clerk

PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE.

Account No. 101-80400-5354

Commission Meeting Date: April 10, 2018

Date: April 4, 2018
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
**RE: Amendment to the Zoning Ordinance – Wireless
Communication Service Facilities - SECOND READING**

SUMMARY OF REQUEST:

Staff-initiated request to amend Section 2321 of the zoning ordinance to expand the overlay district to allow Wireless Communication Service Facilities at 1800 Peck St (Marsh Field) and 2375 Beach St (Water Filtration Plant). Staff has prepared two options for the Water Filtration Plant location and is requesting that the Commission select one of them.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

To approve the zoning ordinance amendment, with option 1 for the Water Filtration Plant location.

COMMITTEE RECOMMENDATION:

The Planning Commission tabled the request at their December 14, 2017 meeting over concerns about the Water Filtration Plant location. At their March 15, 2018 meeting, they approved a motion 8-0 to recommend approval of the request to expand the overlay district as presented, with option 1 for the Water Filtration Plant site.

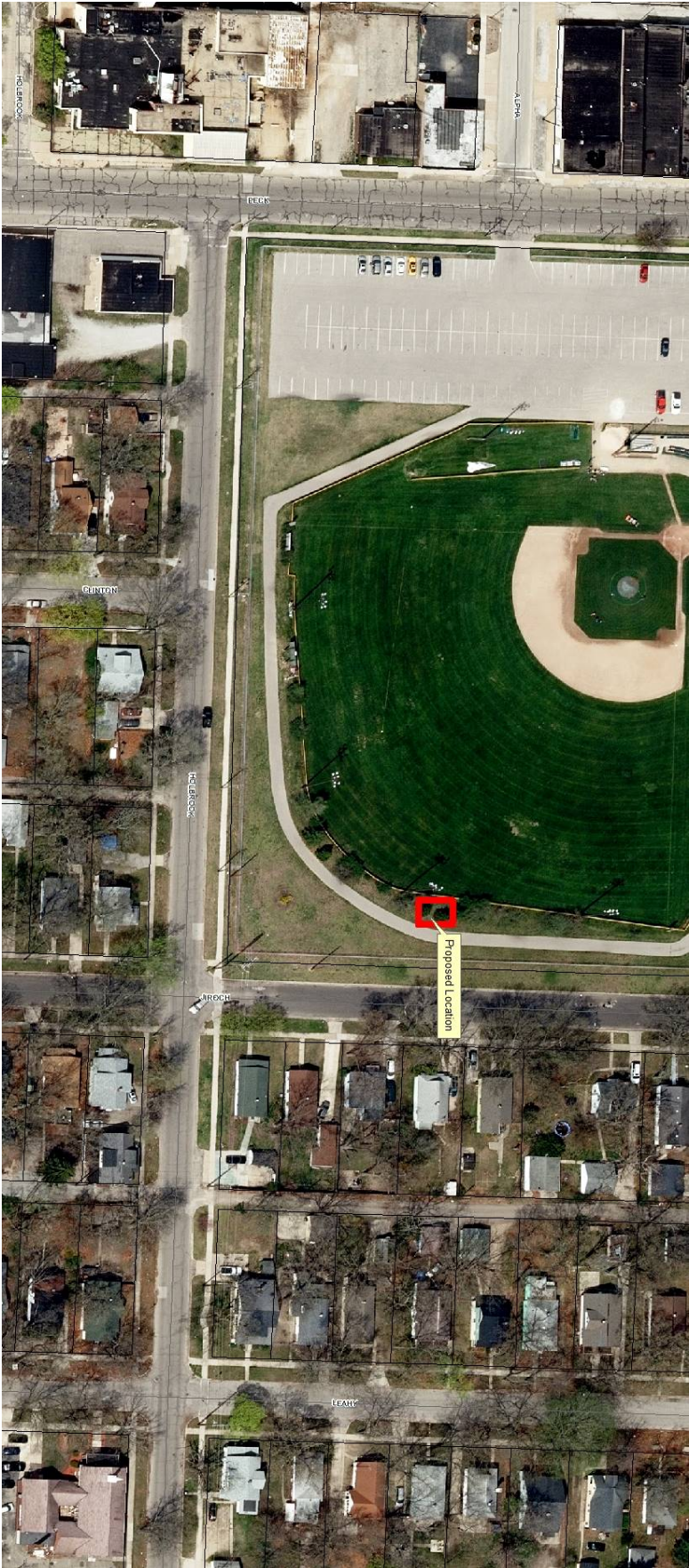
PLANNING COMMISSION EXCERPT
STAFF REPORT
March 15, 2018

Hearing, Case 2017-33: Staff-initiated request to amend Section 2321 of the zoning ordinance to expand the overlay district and allow Wireless Communication Service Facilities at 1800 Peck St (Marsh Field) and 2375 Beach St (Water Filtration Plant).

SUMMARY

1. Cell phone towers are regulated by Section 2321 (Wireless Communication Service Facilities) of the zoning ordinance. Please see the enclosed ordinance excerpt.
2. An overlay district allows these facilities in four different locations in the City.
3. Staff is requesting to expand the overlay district with two new locations, one at Marsh Field and the other at the Water Filtration Plant. This would be to increase cell phone coverage throughout the City. This request is just to expand the overlay district and allow companies to apply for a Special Land Use Permit to construct a new facility.
4. There were some concerns from citizens at the December Planning Commission meeting about the Water Filtration location. They recommended that the proposed location be moved 200 feet to the south along the bike path. Staff has prepared that as Option 2 on the aerial map. Option 1 would be in the area inside the Water Filtration parcel where there are already two existing antennas.
5. If Option 1 is selected, the existing antennas could be relocated onto the new facility. It may not be possible to relocate them to Option 2 because of the cost laying new wires.
6. Staff sent out a notice to everyone in the block near the Marsh Field location and there were no comments. Staff sent out two notice letters to everyone within 300 feet of the Water Filtration Plant. At the time of this writing, staff had received calls from Susan Newton at 3444 Keaton Ct and Herb Hooker at 3443 Keaton Ct, who were both in favor of Option 1 so that they would only have to see one cell tower poll instead of two antennas.

Marsh Field Location



Water Filtration Plant Site



CITY OF MUSKEGON

MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. _____

An ordinance to amend Section 2321 of the zoning ordinance to expand the overlay district and allow Wireless Communication Service Facilities at 1800 Peck St (Marsh Field) and 2375 Beach St (Water Filtration Plant).

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

NEW LANGUAGE

Additions in **bold**.

SECTION 2321: WIRELESS COMMUNICATION SERVICE FACILITIES [amended 12/97]

Overlay District Established for Wireless Communication Support Facilities [amended 6/06]

Intent: An overly zone is hereby created for the siting of wireless communication facilities (WCF) and wireless communication antenna (WCA). The zone is identified as:

1. The Pulaski Lodge, 871 Pulaski Avenue described as:
W 589 ft of E 757 ft of N 10 acres of SE ¼ of SE ¼ exc N 25 ft thereof Sec 37 T10N R17W.
2. City of Muskegon That Part of NE 1/4 of SE 1/4 Sec 33 T10N R16W Lying S of Consumers Power Co 100 Ft R/W W Of US 31 State Hwy E Of Relocated C & O R R R/W & N Of Little Black Creek
3. City property near the terminus of Yuba Street, described as:
Lot 1 Blk 1 & that part of Lot 3 Blk 1 & N ½ of SE ½ Sec 17 T10N R16W lying Sly & Ely of Muskegon River & Nly of US 31 business rte and Lots 1, 2 & 3 Blk 121.
4. A portion of the Muskegon Community College campus, 221 S. Quarterline Road, described as:
Commencing at the S ¼ corner of Section 15, T10N, R16W, City of Muskegon, Muskegon County, Michigan, thence N 01°04'25" E 815.71 feet along the N-S ¼ line of said Section 15 and the centerline of Quarterline Road (66 feet wide); thence N 88°56'41" W 1035.89 feet to the Point of Beginning; thence continuing N 88°56'41" W 60.00 feet; thence N 01°03'19" E 60.00 feet; thence S 88°56'41" E 60.00 feet; thence S 01°03'19" W 60.00 feet along the West face of an existing building to the point of beginning being a part of the SW ¼ of Section 15, T10N, R16W, City of Muskegon, Muskegon County, Michigan, and containing 0.083 acres or 3600 sq. ft. of land, more or less, subject to easements and restrictions of record, if any. [amended 11/00]
5. **Marsh Field described as (to be described after survey completion)**
6. **Water Filtration Plant described as (to be described after survey completion)**



This ordinance adopted:

Ayes: _____

Nays: _____

Adoption Date: _____

Effective Date: _____

First Reading: _____

Second Reading: _____

CITY OF MUSKEGON

By: _____
Ann Meisch, MMC, City Clerk

CERTIFICATE

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 10th day of April, 2018, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted and public notice was given pursuant to and in full compliance with the Michigan Zoning Enabling Act, Public Acts of Michigan No. 33 of 2006, and that minutes were kept and will be or have been made available as required thereby.

DATED: _____, 2018.

Ann Meisch, MMC
Clerk, City of Muskegon

Publish: Notice of Adoption to be published once within ten (10) days of final adoption.

**CITY OF MUSKEGON
NOTICE OF ADOPTION**

Please take notice that on March 27, 2018, the City Commission of the City of Muskegon adopted an ordinance to amend Section 2321 of the zoning ordinance to include two more locations in the overlay district that allows Wireless Communication Support Facilities.

Copies of the ordinance may be viewed and purchased at reasonable cost at the Office of the City Clerk in the City Hall, 933 Terrace Street, Muskegon, Michigan, during regular business hours.

This ordinance amendment is effective ten days from the date of this publication.

Published _____, 2018.

CITY OF MUSKEGON

By _____
Ann Meisch, MMC
City Clerk

PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE.

Account No. 101-80400-5354

Wireless Communication and the City of Muskegon

The City of Muskegon regulates wireless communication towers in its zoning ordinance through the use of an overlay zone. The City recognizes that siting towers is more dependent on topography and proximity to major transportation routes than a particular zoning district. The City has established several sites where cellular towers may be placed under Special Use Permit. Collocation is required. A special use permit is issued by the Planning Commission.

The second, more preferred scenario is placement of wireless antenna as an accessory use. These are permitted in any zoning district on structures over 5 stories in height and on existing utility or light poles.

See attached ordinance language for more details.

For further Information:

Zoning questions: Contact the Zoning Administrator, 231-724-6702

Building permit questions: Contact the Building Inspector, 231-724-6715

Towers and antenna on City Property: Contact the DPW Director, 231-724-4100

Cellular Tower Regulations

Adopted December 9th, 1997

Definitions

Colocation: The use of a wireless telecommunication support facilities by more than one wireless telecommunication provider

Lattice tower: A support structure constructed of vertical metal struts and cross braces, forming a triangular or square structure which often tapers from the foundation to the top.

Monopole: A support structure constructed of a single, self-supporting hollow metal tube securely anchored to a foundation.

Wireless Communication Antenna (WCA): Any antenna used for the transmission or reception of wireless communication signals excluding those used exclusively for dispatch communications by public emergency agencies, ham radio antennas, satellite antennas, those which receive video programming services via multipoint distribution services which are one meter (39 inches) or less in diameter and those which receive television broadcast signals.

Wireless Communication Equipment Shelter: The structure, shelter, cabinet or vault in which the electronic receiving and relay equipment necessary for processing wireless telecommunications is housed together with necessary related equipment such as radios, cable, conduit, connectors, air conditioning units and emergency generators.

Wireless Communication Facilities (WCF): All structures and accessory facilities relating to the use of the radio frequency spectrum for the purpose of transmitting or receiving radio signals and may include, but is not limited to radio towers, television towers, telephone devices and exchanges, micro-wave towers, and commercial mobile radio service facilities. Citizen band radio facilities, short wave facilities, ham, amateur radio facilities, and satellite dishes, and governmental facilities which are subject to state or federal law or regulations which preempt municipal regulatory authority are not included in this definition.

Wireless Communication Support Facilities (WCSF): A monopole, guyed, or lattice type tower designed for the attachment of or as support for wireless communication antennas or other antennas.

General Provisions

SECTION 2321: WIRELESS COMMUNICATION SERVICE FACILITIES [amended 12/97]

This section provides for appropriate areas for the siting of wireless communication antenna, support facilities and equipment shelters in recognition of the public need and demand for advanced telecommunication and information technologies and services balanced against the impacts such facilities may have on properties within the City. It is the further purpose and intent of these regulations to:

1. Provide for the appropriate location and development criteria for wireless communication support facilities and wireless communication antenna within the City
2. Allow and encourage the location of wireless communication support facilities in the overlay zoning district
3. Minimize the adverse effects of such facilities through careful design, siting and screening criteria
4. Maximize the use of existing and future wireless communication support facilities and encouraging multiple uses and co-location of such facilities
5. Protect the character of residential areas throughout the City from the effects of wireless communication facilities
6. Promote the public health, safety, and welfare.

Uses Permitted:

Wireless Communication Antenna (WCA) shall be considered a permitted accessory use in any zoning district when:

1. Placed on or attached to any existing structure at least five (5) stories in height which constitutes a principle use, including existing communication towers and water towers provided: [amended 4/02]
 - a. In the case of a five (5) story building, that any WCA shall not extend more than thirty (30) feet above the roofline of the structure to which it is attached.
 - b. In the case of a six (6) story building, that any WCA shall not extend more than forty (40) feet above the roofline of the structure to which it is attached.
 - c. In the case of a seven (7) story building, that any WCA shall not extend more than fifty (50) feet above the roofline of the structure to which it is attached.
 - d. In the case of an eight (8) story building, that any WCA shall not extend more than sixty (60) feet above the roofline of the structure to which it is attached.

- e. In no case shall any WCA extend more than sixty (60) feet above the roofline of the structure to which it is attached.
2. Placed on an existing utility or light pole which will serve as a wireless telecommunications facility and where the height of said existing pole or other structure is not increased more than twenty (20) feet and the existing pole and other structure is not proposed to be modified in a manner which would materially alter the pole or structure and/or result in an impairment of sight lines or other safety interest.

Provided:

1. WCAs shall require no personnel on the premises except as necessary for maintenance and repair.
2. All WCAs shall be designed to blend into or meet the aesthetic character of the principal (primary) structure where reasonably practical taking into consideration the location of the WCA and the line of sight angle and distance from the right-of-way and neighboring uses.
3. A WCA proposed to be located on a historic landmark or in a designated historic district may be denied if the WCA would create an adverse impact on the historic character of the historic landmark or district.
4. Associated wireless telecommunication equipment shelters meet accessory use height and setback requirements of the district, and receive administrative approval.
5. This section shall not exempt the applicant from such other government review and permitting procedures of the Federal Communications Commission or Federal Aeronautics Administration.

Overlay District Established for Wireless Communication Support Facilities [amended 6/06]

Intent: An overly zone is hereby created for the siting of wireless communication facilities (WCF) and wireless communication antenna (WCA). The zone is identified as:

1. The Pulaski Lodge, 871 Pulaski Avenue described as:
W 589 ft of E 757 ft of N 10 acres of SE ¼ of SE ¼ exc N 25 ft thereof Sec 37 T10N R17W.
2. City of Muskegon That Part of NE 1/4 of SE 1/4 Sec 33 T10N R16W Lying S of Consumers Power Co 100 Ft R/W W Of US 31 State Hwy E Of Relocated C & O R R R/W & N Of Little Black Creek
3. City property near the terminus of Yuba Street, described as:
Lot 1 Blk 1 & that part of Lot 3 Blk 1 & N ½ of SE ½ Sec 17 T10N R16W lying Sly & Ely of Muskegon River & Nly of US 31 business rte and Lots 1, 2 & 3 Blk 121.
4. A portion of the Muskegon Community College campus, 221 S. Quarterline Road, described as:
Commencing at the S ¼ corner of Section 15, T10N, R16W, City of Muskegon, Muskegon County, Michigan, thence N 01°04'25" E 815.71 feet along the N-S ¼ line of

said Section 15 and the centerline of Quarterline Road (66 feet wide); thence N 88°56'41" W 1035.89 feet to the Point of Beginning; thence continuing N 88°56'41" W 60.00 feet; thence N 01°03'19" E 60.00 feet; thence S 88°56'41" E 60.00 feet; thence S 01°03'19" W 60.00 feet along the West face of an existing building to the point of beginning being a part of the SW ¼ of Section 15, T10N, R16W, City of Muskegon, Muskegon County, Michigan, and containing 0.083 acres or 3600 sq. ft. of land, more or less, subject to easements and restrictions of record, if any. [amended 11/00]

Wireless communication support facilities are permitted as special land uses in the overlay zone and shall be permitted under the purview of Section 2332 after review and approval of the use by the Planning Commission, after public hearing, subject to the applicable conditions imposed by the Planning Commission:

1. The facility shall comply with all applicable Federal Aeronautics Administration and the Federal Communications Commission requirements.
2. All WCSF shall be constructed in compliance with all applicable construction codes, including, without limitation, the Electronic Industries Association/Telecommunications Industry Association (EIA/TIA) Structural Standards of Steel Antenna Towers and Antenna Supporting Structures and shall be certified as such by a licensed structural engineer.
3. Accessory equipment storage structures shall meet the setback and height requirements of the underlying zone. No accessory equipment or structure shall be allowed in any rights-of-way.
4. The WCSF shall not be used for advertising purposes and shall not contain any signage except which shall show the identity of the service provider and emergency telephone numbers. The sign or signs shall not exceed two square feet in size, and shall be easily readable from ground level.
5. The WCSF may be located on a zoning lot containing permitted other principal uses or approved special uses.
6. The WCSF may be located within an area smaller than the minimum lot size of the underlying zoning district. The area within which the WCSF is located shall be the area subject to the requirements of this section, rather than the entire zoning lot, unless otherwise provided herein, or reasonably required by the planning commission.
7. Existing vegetation (trees and shrubs) shall be preserved to the maximum extent possible. The WCSF shall have a landscaped buffer so that the base of the WCSF and accessory equipment structure or storage area shall be screened from any right-of-way, residential use, or residential zoning district. Such landscaped buffer shall be placed on the site in a manner which will maximize the aesthetic and environmental effects, while at the same time providing the required visual buffer. The landscaped buffer shall consist of hedges planted leaf to leaf which shall reach a height of not less than six (6) feet at maturity and

conifer trees planted on fifteen (15) foot centers along the approved buffer. Requirements may be modified by the Planning Commission as appropriate for the specific site.

8. The application shall contain information showing the geographic search area within which the proposed WCSF must be located and shall also provide locations of all structures of similar height within and adjacent to the search area.
9. WCSFs shall not have a shiny or metallic finish.
10. The WCSF shall not exceed 200 (two-hundred) feet in height.
11. If located on the same zoning lot with another permitted use, the WCSF shall not be located in a front yard abutting a street.
12. Legal access to the WCSF shall be provided regardless of other developments that may take place on the property.
13. Towers shall not be artificially lighted unless required by the FAA. When lighting is required by the FAA or other federal or state authority, it shall be oriented inward so as not to project onto surrounding property or the site shall be landscaped to mitigate light impact.
14. All exterior building material shall be compatible with surrounding structures but in no case shall they be cinder or cement block, and metal, other than aluminum siding. Towers shall be enclosed by security fencing not less than six feet in height.
15. Monopoles may be required by the Planning Commission if it is deemed to be more aesthetically compatible with the area than a lattice pole.
16. Antenna and metal towers shall be grounded for protection against a direct strike by lightning and shall comply as to electrical wiring and connections with all applicable state and local statutes.
17. Tower owners shall provide maintenance and safety reports to the city's building official.
18. Proof of responsibilities in the case of abandonment shall be submitted with the application.

Replacement of Existing WCSFs:

1. The replacement WCSF shall not exceed a total height of 200 (two-hundred) feet or, if the existing WCSF has an approved height greater than 200 (two-hundred) feet, the replacement WCSF shall not exceed the approved height.
2. The replacement WCSF shall be located within the same zoning lot as the existing WCSF and shall be located to comply with existing minimum yard requirements.

3. The existing WCSF shall be removed within 90 days of completion of the replacement WCSF and the relocation or installation of the WCA.
4. If the location of the replacement WCSF is such that the existing WCSF must be moved before the replacement WCSF is constructed, temporary portable antennae support facilities may be used, but must be removed within 30 days of the completion of the replacement WCSF and the relocation or installation of the WCA.

Review Criteria for new WCSFs:

1. A new WCSF shall not be approved unless it can be demonstrated by the applicant that there is a need for the new WCSF which cannot be met by placing WCA on an existing WCSF or on other structures or replacement of an existing WCSF. Information concerning the following factors shall be considered in determining that such need exists:
 - a. Insufficient structural capacity of existing WCSFs or other suitable structures and inability to reinforce or replace an existing WCSF
 - b. Unavailability of suitable locations to accommodate system design or engineering on existing WCSF or other structures
 - c. Radio frequency interference or other signal interference problems at existing WCSF or other structures
 - d. The cost of using an existing WCSF or other structure exceeds the costs of permitting and constructing a new WCSF
 - e. Other factors which demonstrate the reasonable need for the new WCSF.

Co-location Required:

1. The applicant must include in the application an affidavit stating space on a proposed tower will be made available to future users when technically possible.
2. The applicant shall send a written notice via certified mail to all potential users of the new WCSF offering an opportunity for co-location. The list of potential users shall include those entities that have requested approval of WSCF in the past, current FCC license holders, and any other entities requesting to be included on the list. Copies of the notice letters shall be provided to the City at the time the application is filed. If, during a period of 30 days after the notice letters are sent to potential users, a user or users request, in writing, to co-locate on the new WCSF, the applicant shall accommodate the request(s), unless co-location is not reasonably possible based on the criteria of this subsection.

Removal of Abandoned WCSFs:

All providers owning a wireless telecommunications support facility shall notify the zoning administrator when the use of said tower located in the municipality will be discontinued and the date it will cease. Any WCSF which is abandoned shall be removed or demolished within 90 days of abandonment. For the purposes of this section, abandoned shall mean that no WCA or other commercial antenna has been operational and located on the WCSF for 180 days or more. Where a WCSF is abandoned but not removed or demolished as required, the City may remove or secure the removal of the facility or required portions thereof, with its actual cost and reasonable administrative charge to be placed on the property. A lien on the property shall be superior to all other liens except taxes.

Mike Franzak

From: Mary Schutt <mary.schutt@hotmail.com>
Sent: Wednesday, March 07, 2018 11:14 AM
To: Mike Franzak
Subject: Water Filtration cell phone pole

Hello Mr. Franzak,

I am a property owner near the Water Filtration plant and received your letter dated Feb. 27. I think it will be great to have a new cell phone pole at the beach to enhance communication. More reliable cell service is needed in the beach area. I would prefer the "Option 1" location, but I can also support "Option 2", although I think it is important to preserve the peacefulness and beauty of the woods and the bike trail there. But we live with the power poles that cut through the same area on the opposite side of the trail. We will get used to a pole in either location. Thank you for your work on this project.

Respectfully,

Mary Schutt

3355 Lakeshore Dr.

RECEIVED

March 11, 2018

MAR 12 2018

CITY OF MUSKEGON
PLANNING DEPT

Dear Members of the Planning Commission,

You recently sent a letter to me and my husband Ed DeJong outlining the proposal for granting a zoning variance that would allow the construction of a cell tower on or near the Water Filtration Plant property. In that letter we were encouraged to attend the upcoming meeting of the Planning Commission or, if unable to attend, to express our concerns in a letter. Since both of us have previous, unbreakable commitments Thursday evening, I am sending you this letter in the hopes that you will give it a careful reading.

I have two major concerns about the proposal described in the letter—one of them personal, the other public.

Since my address is 3430 Whiskey Hollow Dr. I am a Bluffton Neighborhood resident. My home overlooks the Water Filtration Plant, the bike path and the beach. I pay \$15.60 per day in taxes to the City of Muskegon for the privilege of living where I do and for the joy of treasuring the view that I have. Therefore, I have a great personal concern that the construction of a cell tower would be a profound detriment to that view and, therefore, to my property's value and to my quality of life. And I feel fairly confident that there would be no profound reduction in my taxes to compensate me for those losses.

But however strongly I feel about the inappropriateness of erecting a cell tower at the beach for myself personally, I feel even more strongly about it being the absolutely wrong thing to do for Muskegon publically. Muskegon has adopted the goal of recreating itself as a tourist destination. Some very exciting things are happening downtown and elsewhere to further Muskegon's new image. The slogan "Watch Muskegon Go" has been posted on billboards and buildings and tee shirts and TVs. I can't help but wonder.....how does the construction of an eyesore like a cell tower fit into that goal, into that slogan? How does something as visually invasive as a cell tower make Muskegon more desirable to tourists? Why would a community that watched and cheered as the smokestacks on the former Sappi property on Muskegon Lake came down want anything to do with having a cell tower go up.....alongside the Pere Marquette Park beach on Lake Michigan? Why would tourists coming to Muskegon on the high speed ferry or on the cruise ships want the first thing they see as they approach the natural beauty along the channel to be a huge, metallic, industrial-looking cell tower? Why would bike riders who come from all over to enjoy the natural beauty along our amazing bike path want to stare at a gigantic piece of man-made hardware? I cannot imagine that anyone who loves Muskegon as I do would want to "WATCH M US ke GO n" in the very wrong direction of putting a cell tower between the bike path and the lakeshore.

We as a lakeshore community have a unique and precious opportunity to do the transition from an industrial-based to a tourism-based economy right. We really need to make the very best decisions for the sake of our city's future. You have been entrusted with the job of helping to make those future-enhancing decisions. I trust that you will elect to maintain the zoning as it currently stands and keep our precious natural resources unspoiled and beautiful for us and for future generations to utilize and enjoy.

Thank you for reading about and considering my concerns.

Sincerely,



Diane Van Wesep

March 11, 2018

RECEIVED

MAR 12 2018

CITY OF MUSKEGON
PLANNING DEPT

Subject: Request to amend Section 2321 of the zoning ordinance at 2375 Beach St.

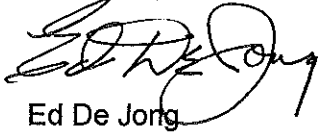
Dear Members of the Planning Commission:

I am an owner/resident of 3430 Whiskey Hollow Dr. directly across from the Water Filtration Plant. I am opposed to amending the zoning ordinance to allow Wireless Communication Service Facilities at 2375 Beach Street for the following reasons:

- The basic purpose and function of zoning is to divide a municipality into residential, commercial, and industrial districts that are separate from one another. Placing a cellular tower here injects an industrial look in the middle of a residential and recreational area.
 - The Beach Street property is the City of Muskegon's most beautiful property. The beach was listed as one of the 50 finest beaches in the US. This is our show piece not a place for an industrial tower. We need to take pride in our natural resources not desecrate them.
 - The Watch Muskegon campaign calls Muskegon the "Riviera of the Midwest." This location is exactly what they are talking about. Muskegon's greatest natural asset. Not a place for an industrial tower.
 - Muskegon has had to fight for years against a reputation as a dirty old industrial town. At one time the City logo showed smoke stacks. We are finally breaking free of these views. Putting an industrial tower at our beach would say that we really don't care about the quality of our natural resources.
- This proposal is in opposition to the intent of the zoning regulations.
 - Four overlay zoning districts have been set up for locations for these towers. These districts are set up to allow and encourage the location of these towers. This should not become an added location.
 - The regulations are set up to "Minimize the adverse effects of such facilities through careful design, siting and screening criteria." This industrial tower will adversely affect the beauty of this prime location in our city.
 - The regulations are set up to "Protect the character of residential areas throughout the City from the effects of wireless communication facilities." This would do the opposite.
- This amendment would be in violation of the zoning ordinance. The location, Option 1, would be placing a tower in a front yard abutting a street.
- This amendment in the location of Option 2 would set a dangerous precedent of using park property for other uses. This usage would also add a negative view to a beautiful natural area.
- This location is in the critical dune area that requires DNR approval of construction and the removal of trees.

We all want to "Watch Muskegon Go" in an upward direction not a downward direction.. Vote "no" on this proposed amendment. Thank you.

Yours truly,

A handwritten signature in black ink, appearing to read "Ed De Jong", written over the printed name.

Ed De Jong

Unapproved Planning Commission meeting minutes – March 15, 2018

Hearing, Case 2017-33: Staff-initiated request to amend Section 2321 of the zoning ordinance to expand the overlay district and allow Wireless Communication Service Facilities at 1800 Peck St (Marsh Field) and 2375 Beach St (Water Filtration Plant). M. Franzak presented the staff report. Cell phone towers are regulated by Section 2321 (Wireless Communication Service Facilities) of the zoning ordinance. An overlay district allows these facilities in four different locations in the City. A map was provided to the board members showing those locations. Staff is requesting to expand the overlay district with two new locations, one at Marsh Field and the other behind the Water Filtration Plant. This would increase cell phone coverage throughout the City. This request is only to expand the overlay districts and allow companies to apply for a Special Land Use Permit to construct a new facility. There were some concerns from citizens at the December Planning Commission meeting about the water filtration plant location. They recommended that the proposed location be moved 200 feet to the south along the bike path. Staff has prepared that as option 2 on the aerial map included in the staff report. Option 1 would be in the area inside the water filtration plant parcel where there are already two existing antennas. If option 1 is selected, the existing antennas could be relocated to the new facility. It may not be possible to relocate them to Option 2 due to the cost laying new wires. Staff sent out a notice letter for this hearing to everyone within 300 feet of the water filtration plant. At the time of this writing, staff had received calls from Susan Newton at 3444 Keaton Ct and Herb Hooker at 3443 Keaton Ct, who were both in favor of Option 1 which showed one cell tower pole instead of the two antennas currently there.

Staff recommends approval of the ordinance amendment with option 1 for the water filtration plant site. Staff received no opposition to the proposed Marsh Field location.

M. Franzak discussed comments he had received after the staff report was sent to board members. D. VanWesep and E. DeJong of 3430 Whiskey Hollow Dr both wrote letters opposing any cell tower location at the beach. D. VanWesep stated that it would negatively affect their view and believed it was bad for Muskegon's image as a tourist destination. E. DeJong was opposed due to having a cell tower or pole of an industrial nature obstructing the lake views. He also believed that it violated the zoning ordinance. M. Schutt of 3355 Lakeshore Dr wrote in support of Option 1, as better cell service was needed in the beach area. B. Mazade asked how tall the current towers were that were located on the property, and how tall the proposed cell pole would be. M. Franzak estimated the current towers to be 125 feet tall; a monopole like the one proposed was allowed to be up to 200 feet tall maximum. B. Mazade asked if a Special Use Permit would be required in order to erect the actual pole. M. Franzak stated that was correct. J. Doyle asked about the assertion in Mr. DeJong's letter about option 1 being in violation of the zoning ordinance. M. Franzak stated that the proposal did not violate the zoning ordinance for cell towers. He went on to discuss option 2's location, which was a less desirable option, as it was in a critical dune area as well as a city charter park.

D. Alexander of 3410 Whiskey Hollow stated that he was in favor of either option 1 or 2, depending on what the other neighbors decided. He asked if the City would get paid for use of the cell pole. F. Peterson stated that was correct. There was further discussion on whether any profits made from the tower would go toward the water department or the parks department. M. Franzak

stated that option 2 located in the charter park would complicate the leasing of pole space and could be an expensive, time-consuming legal process according to the City's counsel. K. Kolberg of 3414 Whiskey Hollow stated that he did not think the beach was the proper area for a tower or pole, and he was concerned that allowing one would lead to more. B. Mazade stated that city ordinance required co-location on the same pole, to eliminate the need for several poles or towers. L. Taunt owned property on Whiskey Hollow and stated that either option would be acceptable but it appeared that option 2 would be best for the neighbors. L. Page stated that he represented the Pigeon Hill Alliance, a non-profit group concerned with environmental issues in the area. He stated that he had made several cell phone calls from the area and was able to get through each time. Board members and other audience members stated that they regularly had calls dropped in the area of the beach. L. Page stated that he preferred option 1 over option 2, as option 2 was in a charter park and critical dune area.

A motion to close the public hearing was made by M. Hovey-Wright, supported by J. Doyle and unanimously approved.

A motion that the request to amend Section 2321 of the zoning ordinance to expand the overlay district for Wireless Communication Support Facilities be recommended to the City Commission for approval, with Option 1 being the recommended choice for the Water Filtration Plant site, was made by M. Hovey-Wright, supported by J. Doyle and unanimously approved, with T. Michalski, F. Peterson, B. Mazade, J. Doyle, M. Hovey-Wright, and E. Hood voting aye. F. Peterson confirmed that the motion included the Marsh Field site. M. Franzak stated that was correct.

Date: April 10, 2018

To: Honorable Mayor and City Commissioners

From: Department of Public Works - Filtration

RE: 2018/19 Water Treatment Sodium Hypochlorite Bids

SUMMARY OF REQUEST:

Recommend endorsement of lowest responsible bidder to supply sodium hypochlorite for the Water Filtration Plant.

FINANCIAL IMPACT:

An estimated cost of \$71,280.00 (based on average annual water pumped and feed rates).

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

Staff recommends the Mayor and City Commission endorse the low bid received and allow staff to enter into a contract with Olin for sodium hypochlorite for one year, beginning April 15, 2018.

Liquid Sodium Hypochlorite - Bid tab 2018

	Rowell Chemical	Olin	Alexander Chemical	Haviland	Wilson Industrial Sales
Cities of Holland, Wyoming, Muskegon, Muskegon Heights, Grand Haven and Grand Rapids, MI.					
1 Year Contract: Starting April 15, 2018 - April 14, 2019					
<u>Bulk Shipments</u>					
Cost Per Ton:	\$ 169.00	\$ 158.40	\$ 167.40	NO BID	NO BID
Cost Per Gallon:	0.85	0.79	0.839		
<u>Totes</u>	NO BID	NO BID	2.978 / gal 330 gal / tote	NO BID	NO BID
Lead-time ARO	1 - 2 days ARO	1-3 days ARO	1 day ARO		

MEMO

Date: April 2, 2018

To: Honorable Mayor & City Commission

From: Finance & Administrative Services

RE: CITY HALL CARPET PURCHASE



SUMMARY OF REQUEST:

The Finance & Administrative Services Division has been charged with purchasing new carpet beginning with the offices on the first floor of City Hall. The current carpet was installed at the time of a building renovation in 1996. Over the course of the last five years we have noticed areas of extreme wear and tear from rolling chairs, moving furniture, partition walls leaving empty spots, and an inability to keep the carpet clean with our usual carpet cleaning schedule. Approximately 10 months ago, Safebuilt bid out their renovation project with consideration of the top 3 lowest bids, and contracted with the local vendor who had the lowest, most reasonable bid for their project. Understanding that the rest of City Hall still needed to be renovated, we were given the opportunity to lock in the same bid rate for the rest of the City offices provided we continue the project within a reasonable period of time.

As part of this process we will work with Lakeshore Office Furniture to uninstall and reinstall the workstations, and Modernistic to clean the cubicle partitions.

We are requesting that the City Commission authorize staff to purchase flooring and services related to the purchase and installation of new carpet and flooring for the City Hall offices from Lakeshore Carpet One of 2591 McCracken.

FINANCIAL IMPACT:

\$100,000 has been allocated in the public improvement fund for (Phase1) carpeting City Hall. This was approved with the 2017/2018 Annual Budget. The current estimate is for \$68,493.87 for the first floor.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION:

Authorize staff to purchase flooring and services related to the purchase and installation of new carpet and flooring for the City Hall offices from Lakeshore Carpet One of 2591 McCracken.

Date: April 10, 2018

To: Honorable Mayor and City Commissioners

From: City Manager

RE: Heritage Square Commons Loan

SUMMARY OF REQUEST:

Gary Post has requested a construction loan in the amount of \$300,000 for construction at Heritage Square Commons II.

FINANCIAL IMPACT:

A \$300,000 loan to be paid back in full.

BUDGET ACTION REQUIRED:

STAFF RECOMMENDATION:

Approval.

CONSTRUCTION LOAN AGREEMENT

THIS CONSTRUCTION LOAN AGREEMENT (the "Agreement") is effective as of _____ 2018, ("Effective Date"), between the City of Muskegon, c/o City Manager, a Michigan municipal corporation, with offices located at 933 Terrace Street, Muskegon, Michigan 49443 ("City"), and HSD II, LLC, a Michigan limited liability company whose registered office is located at 272 W Clay Avenue, Muskegon, MI 49440 (the "Borrower").

The Borrower has constructed a building envelope to contain up to four commercial units and up to four residential units of a condominium to be called Heritage Square Commons (the "Project") on the real estate described on the attached Exhibit A (the "Land"). The Borrower has requested a loan of Three Hundred Thousand Dollars (\$300,000.00) to finance part of the cost of constructing the building which will contain the eight condominium units (the "Construction Loan"). The City desires to make the Construction Loan on the terms and conditions set forth in this Agreement.

THE CITY AND THE BORROWER AGREE AS FOLLOWS:

SECTION 1 **THE LOAN**

Section 1.1. Construction Loan. Subject to the terms and conditions of this Agreement, the Borrower may from time to time until the earlier of the date the Project is substantially complete (as defined in Section 1.2(b)(1)) or December 31, 2018, draw against the Loan provided that the maximum amount outstanding shall not exceed \$300,000.00.

Section 1.2. Construction Loan Note. Simultaneously with the execution of this Agreement, the Borrower shall execute and deliver to the City a Promissory Note of even date and in the form and substance satisfactory to the City (the "Construction Note") with a principal amount of \$300,000. The Construction Note will, among other provisions, contain the following:

(a) Term: 24 months;

(b) Interest Rate:

(1) no interest will be charged during the Term if the Project is substantially completed by July 1, 2018. (The project will be considered 'substantially complete' when the building envelope is complete and Certificates of Occupancy have been received for all eight interior units; and

(2) If the Principal amount of the loan is repaid before December 31, 2019, no interest shall be due.

(3) In the event either of the above conditions are not met, interest shall begin accruing on the Construction Note from December 31, 2018 at the rate of 5% per annum.

(c) Payment: monthly payments beginning on the first day of the month 90 days after substantial completion. Full payment due upon the earlier of the expiration of the term, or the sale or lease of all units.

(d) Upon the sale of a residential unit or the lease of a commercial unit, the Borrower shall repay to the Lender 60% of the net proceeds of the sale of a residential unit and \$40,000 within 30 days of the execution of a lease for a commercial unit.

Section 1.3. Use of Construction Loan Proceeds. The Borrower shall use the proceeds of the Loan solely for the purpose of payment of Approved Costs. "Approved Costs" means:

- (a) Amounts actually due or accrued for services, labor and materials utilized to construct the Project (the "Construction Costs") as set forth on the Construction Budget, which will be provided to City's Counsel and as approved by the City;
- (b) Fees and charges of the City relating to the Loan (the "City Fees").

Section 1.4. Credit for Permit Fees. The Borrower shall be credited with a \$5,000 repayment to principal in recognition of certain inspection fees imposed at the beginning of the Project.

Section 1.5. Conditions to Fund the Construction Loan. The City shall be obligated to make advances under the Construction Loan only if the conditions precedent to funding set forth on Schedule 2 are met.

SECTION 2 **SECURITY**

Section 2.1. Documents. To secure payment and performance of the Loan, and all of the indebtedness owed now or hereinafter owing from the Borrower to the City, the Borrower agrees to execute and deliver to the City in form and substance acceptable to the City, the following:

- (a) A valid and binding mortgage (the "Mortgage") on the Project and Land, which would be junior to a certain mortgage from Community Shores Bank to finance the balance of the costs of the Project and the condominium units.
- (b) An irrevocable assignment of (i) the Borrower's interest in all Loan funds held by Transnation Title whether or not disbursed; (ii) all governmental permits obtained by or on behalf of Borrower for the construction of the Project; and (iii) all reserves, deferred payments, deposits, refunds, costs savings and payments of any kind relating to the construction of the Project.
- (c) A valid and binding, enforceable assignment of rents and leases (the "Assignment of Rents and Leases") with respect to the Project and the Land.
- (d) A valid and binding security agreement or agreements (the "Security Instruments") giving the City a security interest in any and all of the following assets of the Borrower, including any proceeds thereof, whether now owned or hereafter acquired:
 - i. All machinery, equipment, furniture and fixtures.
 - ii. Accounts and accounts receivable.

- iii. All other tangible or intangible assets of the Borrower, including a proportionate interest in tax credits which may be converted to cash by the Borrower. ("Proportionate" is defined as the ratio of the Loan funds to the principal of a certain loan made by Community Shores Bank in the principal amount of \$500,000.)
- (e) The valid and binding guarantees (the "Guarantees") of Gary Post and all other members of Borrower (the "Guarantors"). The Guarantees will be unlimited as to the Construction Loan and be a continuing guarantee of the indebtedness and obligations of the Borrower.
- (f) An assignment of all architectural plans and drawings and specifications for the Project that is acceptable to the City (the "Assignment of Plans"), but which may only be exercised if Borrower is in default.
- (g) An assignment of all contracts for the construction of the Project (the "Assignment of Construction Contract"), but which may only be exercised if Borrower is in default.
- (h) An irrevocable assignment of \$180,000 (60% of the Loan Amount) of certain Brownfield Tax Credits which would otherwise be payable to Heritage Square Development, LLC or HSD II, LLC related to the development of properties along West Clay Avenue, as described in a certain Brownfield Tax Agreement between the City of Muskegon and Heritage Square Development, LLC... The Assignment is attached as an Exhibit to this Agreement.

Section 2.2. Definition of Loan Documents. The Commercial Construction Mortgage, Assignment of Rents and Leases, Security Instruments, Commercial Guaranty, Assignment of Plans and Specifications, Construction Contract Assignment, Commercial Construction Note the various assignments and subordination agreements are collectively referred to as the "Loan Documents".

SECTION 3

INSURANCE

Until the Loan is paid in full and all other obligations of the Borrower under this Agreement are satisfied, the Borrower shall abide by the insurance requirements contained in Schedule 1, incorporated herein by reference.

SECTION 4

ENVIRONMENTAL MATTERS

The Borrower represents, covenants, and warrants to the City as follows:

Section 4.1. No Violations or Hazardous Wastes. City and Borrower acknowledge that the Project is located within an area designated as a Brownfield. At all times since the vesting of interest to the Project in the Borrower and, to the best of the Borrower's knowledge after due inquiry, at all times prior to the vesting of title to the Project in the Borrower there are no and have been no violations of the relevant environmental laws at the Project and no consent orders have been entered with respect thereto. There are no and have been no hazardous wastes either

at, upon, under or within, or discharged or emitted at or from, the Project, and no Hazardous Wastes or Asbestos have flowed, blown, or otherwise become present at the Project from neighboring land, and no Hazardous Wastes or Asbestos have been removed from the Project. Soil conditions that were disclosed to governmental authorities prior to the execution of this Agreement are excluded from the above representation.

Section 4.2. No Claims. The Borrower is not aware of any claims or litigation, and has not received any communication from any person (including any governmental authority) concerning the presence or possible presence of hazardous wastes or asbestos at the Project or concerning any violation or alleged violation of any relevant environmental laws respecting the Project. The Borrower shall promptly notify the City of any such claims and shall furnish the City with a copy of any such communications received after the date of this Loan.

Section 4.3. Notification. The Borrower shall notify the City promptly and in reasonable detail in the event that the Borrower becomes aware of the presence of hazardous wastes or asbestos or a violation of any relevant environmental laws at the Project.

Section 4.4. Compliance with Environmental Law. The Borrower shall ensure that the Project complies and continues to comply in all respects with all relevant environmental laws.

Section 4.5. Remediation. Should the Borrower use or permit the Project to be used or maintained so as to subject the Borrower or the City or any tenant or user of the Project to a claim of violation of any relevant environmental laws (unless contested in good faith) the Borrower shall immediately cease or cause a cessation of such use of operations and shall remedy and fully cure any conditions arising therefrom, at its own cost and expense.

SECTION 5 **INDEMNITY**

Section 5.1. Indemnity. The Borrower shall indemnify and hold harmless the City with respect to any and all claims, demands, causes of action, liabilities, damages, losses, judgments, and expenses (including attorney fees) incurred in connection with the enforcement of these indemnities or otherwise that shall be asserted against or incurred by the City by reason of:

- (a) Any representation or warranty by the Borrower in this Loan being inaccurate in any respect.
- (b) Any failure of the Borrower to perform any of its obligations under this Loan.
- (c) The construction or operation of the Project and its operations unless and until such time as the City takes title to the Project through foreclosure or a deed in lieu of foreclosure.
- (d) Any past, present, or future condition or use of all or any portion of the Project (whether known or unknown), other than an "excluded condition or use", including, without limitation, liabilities arising under any relevant environmental law. An "excluded condition or use" of any portion of the Project is one that:

(i) does not exist or occur, to any extent, at any time before the Borrower has permanently given up possession and control of that portion by reason of a foreclosure of any mortgage or security interest held by the City or a conveyance or transfer of that portion to the City in lieu of foreclosure and

(ii) was not caused, or permitted to exist, in whole or part, by any act or omission of the Borrower.

Section 5.2. Indemnity not limiting other Remedies. Indemnification of the City by the Borrower under this paragraph shall not limit any other right or remedy (including the City's right to accelerate payment of the indebtedness) that is available to the City by reason of the circumstance in respect of which indemnity is made.

Section 5.3. Survival of Indemnity. The Borrower's obligations under this paragraph shall survive the payment in full of the Loan, foreclosure of the Mortgage or any security interest, and any conveyance or transfer in lieu of foreclosure, with respect to all or any portion of the Project.

SECTION 6

DISBURSEMENT OF LOAN PROCEEDS

Section 6.1. Cost Information/Budget. All disbursements will be based upon the Budget. If the Borrower becomes aware of any changes that would increase the total cost of the Project, the Borrower shall notify the City in writing and promptly submit a Revised Budget to the City's Counsel for its approval. No further disbursements need be made by the City unless and until the Borrower shows that it has adequate funds to pay for any increase in the total cost of the Project shown in the revised Budget.

Section 6.2. Disbursement Requests. Upon execution of this Agreement, City shall deposit Three Hundred Thousand Dollars (\$300,000) with Transnation Title to be held in an interest bearing account. All requests for disbursement of Loan amounts shall be made (the "Disbursement Request") in the form and substance acceptable to Transnation Title and the City. The Disbursement Request shall be accompanied by any invoices, architect's certificates, sworn statements, waivers of lien, sales receipts, surveys, and other supporting information requested by Transnation Title and the City. Any monies left in the escrow account upon the substantial completion of the Project or as of March 1, 2019 whichever is sooner, shall be returned to City and credited towards the amount owed by Borrower.

Section 6.3. Title Insurance. No disbursement shall be made until the City receives a current endorsement from Transnation Title Company (the "Title Company") insuring the mortgage lien of the City, without standard exceptions: (a) against construction liens to the extent of the full amount of the requested advance; and (b) as the second lien on the Land.

Section 6.4. Direct Payment to Contractors. The Borrower irrevocably authorizes Transnation Title to make payments directly to the contractor, and/or any subcontractor and/or supplier, at the discretion of the Title Company.

Section 6.5. Disbursement Without Request. The provisions of this Section shall not in any way limit the City's ability to advance Loan funds without the Borrower submitting a Disbursement

Request whether upon the occurrence of an Event of Default as hereafter defined, or otherwise, or to apply any of the Loan proceeds that the City may in its judgment deem prudent to protect the collateral for the Loan or the priority of the City's security.

Section 6.6. No Waiver. The City's advance of Loan funds without one or more condition(s) being met shall neither preclude the City from declaring that the failure to satisfy one or more of the condition(s) as an Event of Default, nor constitute a waiver of such condition(s) with respect to future advances.

Section 6.7. Conditions. The City shall be under no obligation to honor any Disbursement Request or otherwise make disbursements of the Loan proceeds unless all conditions to the advance have been fulfilled in accordance with the terms of this Agreement and unless the Borrower is otherwise not in default hereunder.

Section 6.8. Adjustment of Loan Amount. If the actual cost for any line item is less than the amount shown in the Budget, the City shall permit the Borrower to reallocate the reduction to another Budget category.

Section 6.9. Insufficiency of Loan Proceeds. If the City at any time determines that the amount of funds available to the Borrower from all sources, including the Loan, is not sufficient to pay all remaining costs of completing the Project on or before the Completion Date of Construction, then the City shall not be obligated to make any further advance of Loan funds until such time as the Borrower has delivered to the City additional funds sufficient to make the remaining Loan proceeds adequate to complete the Project.

Section 6.10. Casualty Loss. If the Project shall have been damaged by fire or other casualties and either:

- (a) the City shall not have received insurance proceeds sufficient in the City's judgment to restore the improvements in accordance with the plans; or
- (b) such restoration in the City's judgment cannot be performed within a period of time sufficient for completion of the Project on or before Completion Date of Construction, then the City shall have no obligation to make any further advance of Loan proceeds hereunder.

Section 6.11. City Fees, Charges, Interest, Etc. The City may elect, without notice to or further authorization from the Borrower, to use Loan funds to pay as and when due the City Fees, release charges under any prior encumbrances on the Project, legal fees and disbursements to the City's attorneys, or outside counsel, for which the Borrower is obligated, appraisal costs, environmental fees, searches, recording fees for UCC filing and other security interests, audit fees, any other expenses in reference to structuring, documenting, closing, monitoring or enforcing the Loan, and other sums with respect to the Loan which may be owing from time to time by the Borrower to the City.

Section 6.12. Representations and Warranties Remain True. All representations and warranties from the Borrower to the City contained in this Agreement must remain true at the time of each advance.

Section 6.13 . No Request for Retainage. No Disbursement Request, except for the request for the final disbursement, shall apply for any retainage until such time as all contractual requirements entitling that contractor to retainage have been met.

SECTION 7
CONDITIONS PRECEDENT TO DISBURSEMENTS

Section 7.1. First Advance. The City shall not be obligated to disburse any Loan proceeds unless all the conditions set forth in Schedule 2 to this Agreement have been satisfied by the date hereof.

Section 7.2. Subsequent Advances. The City shall not be obligated to disburse any Loan proceeds after the First Advance unless and until all of the conditions set forth on Schedule 3 of this Agreement have been satisfied on or before the date requested for the disbursement.

Section 7.3. Final Advance. The City shall not be obligated to disburse the final disbursement of Loan proceeds unless and until all of the conditions set forth in Schedule 4 of this Agreement have been satisfied on the date requested for the final disbursement.

SECTION 8
REPRESENTATIONS AND WARRANTIES

The Borrower makes the representations and warranties to the City contained in Schedule 5 of this Agreement, each of which is incorporated herein by reference.

SECTION 9
AFFIRMATIVE COVENANTS

Until the Loan is paid in full and all obligations of the Borrower under this Agreement are satisfied, other than the indemnity provisions that survive payment of the Loan, the Borrower shall abide by the affirmative covenants contained in Schedule 6, which Affirmative Covenants are incorporated herein by reference.

SECTION 10
NEGATIVE COVENANTS

Until the Loan is paid in full and all obligations of the Borrower under this Agreement are satisfied, other than the indemnity provisions that survive payment of the Loan, the Borrower shall abide by the negative covenants contained in Schedule 7, which Negative Covenants are incorporated herein by reference.

SECTION 11
EVENTS OF DEFAULT

The following are Events of Default under this Agreement:

Section 11.1. Payment Under Note. If the Borrower shall fail to make any payment due under the Construction Note.

Section 11.2. Loan Document Provisions. If any provision of any of the Loan Documents at any time ceases to be valid and binding or is declared to be void, or the validity or enforceability

shall be contested, or if any party against whom enforcement could be or is being sought denies that it has further liability or obligation under the documents.

Section 11.3. Failure to Perform. If the Borrower shall fail to pay and to perform any obligation of the Borrower under this Agreement or any of the Loan Documents for a period of ten (10) days after receipt of written notice from the City of that failure.

Section 11.4. Guaranty. If any Guarantor shall breach or fail to perform any requirement of his/her/its Guarantee or shall withdraw such Guarantee and the Borrower shall not have provided a substitute Guarantor satisfactory to the City within fifteen (15) days after such event.

Section 11.5. Liens. If any liens for materials or taxes (except for ad valorem taxes not yet due and payable) or other liens filed against the Project remain unsatisfied or unbonded for a period of thirty (30) days after the date of the filing.

Section 11.6. Lawsuits. If, after the date hereof, any suit is filed, judgment entered, or settlement made by or against the Borrower or any Guarantor requesting or granting relief with an economic value exceeding fifty (50%) percent of the Borrower's net worth or twenty-five (25%) percent of any Guarantor's net worth, which is not covered by insurance and with respect to which there is a reasonable likelihood that an adverse determination or the judgment or settlement could be expected to materially impair the ability of the Borrower or Guarantor(s) to perform their respective obligations under this Agreement, the Guarantees, and the other Loan Documents; and, with respect to any Guarantor, the Borrower shall not have provided a substitute Guarantor satisfactory to the City within fifteen days after such event.

Section 11.7 Bankruptcy. If a levy is made under any process or either the Borrower or any Guarantor shall file a voluntary petition in Bankruptcy under the United States Code as amended from time to time, or an Order for Relief shall be issued against the Borrower or any Guarantor under the Code or either the Borrower or Guarantor shall file a petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief for the Borrower or Guarantor under present or future Federal, State or other statute, law or regulation relating to Bankruptcy, insolvency, or other relief for debtors; if a receiver or trustee for the Project or any other property of the Borrower or Guarantor is appointed and not discharged within thirty (30) days; or if either the Borrower or any Guarantor makes an assignment for benefit of creditors or admits in writing its inability to pay debts; or if either the Borrower or any Guarantor are adjudged insolvent by any Federal, State or other Court of competent jurisdiction; or if any attachment or execution is levied against a substantial portion of the property of either the Borrower or Guarantor if not discharged within thirty (30) days.

Section 11.8. Completion. If the Borrower has failed to satisfy all of the conditions to the City's obligation to make the Final Disbursement under the Agreement on or prior to the Completion Date of Construction.

Section 11.9. Damage or Destruction. If the Project is partially or totally damaged by fire or other cause to such an extent that the Project cannot in the City's reasonable judgment be expected to be completed on or before the Completion Date of Construction.

Section 11.10. Representations and Warranties Untrue. If at any time any representation, warranty or statement made by the Borrower or any Guarantor contained in this Agreement or any other Loan Documents shall be incorrect or misleading in any material respect when made or shall fail to continue to be true at any time until the Loan is repaid in full.

Section 11.11. Construction Contract. If the Borrower is in default under any contract for construction and such default is not cured within twenty (20) days after the date of the default.

SECTION 12 **REMEDIES**

Section 12.1. City's Remedies. If an Event of Default occurs, the City, at its option, in addition to all other remedies which may be available, whether at law, in equity or otherwise, may immediately exercise anyone or more of the following remedies until the Default is cured:

- (a) Declare all or any part of the outstanding principal and interest under the Loan to be immediately due and payable, along with all or any part of the other amounts owing to the City hereunder or under any or all of the other Loan Documents, which shall be due and payable, without presentment, demand or protest.
- (b) Withhold advances under the Loan.
- (c) Terminate its obligation to make any further advances under the Loan except such as the City may elect to make in its sole discretion.
- (d) Take all or any action necessary or appropriate to preserve and protect the Project and any other security for the Loan, including employment of watchmen and the erection of fences and barricades, all at the cost of the Borrower.
- (e) Exercise anyone or any combination of the rights and remedies provided herein or in any other Loan Document or as provided at law or in equity, including the appointment of a receiver.
- (f) Whether or not the Loan is due and payable or the City has instituted any foreclosure or other action for the enforcement of any of the Loan Documents, the City may:
 - (i) enter upon the Project and complete the improvements in accordance with the Plans and Specifications therefor with such changes therein as the City may deem appropriate;
 - (ii) at any time discontinue any work commenced in respect to the Project or change any course of action undertaken by it and not be bound by any limitations or requirements of time, whether set forth herein or otherwise;
 - (iii) assume or in the name of the Borrower continue any contract made by the Borrower in any way relating to the Project and use all or any part of the labor, materials, supplies or equipment contracted for by the Borrower, whether or not previously incorporated into the Project; and
 - (iv) in connection with any construction of the Project and undertaken by the City pursuant to the provisions of this subparagraph, engage or continue contract with builders, contractors, architects, engineers and others for the purpose of furnishing

labor, materials and equipment and services pay, settle or compromise all bills or claims which may become liens against the Project, or which have been or may be incurred in any manner in connection with completing the Project or for the discharge of liens, encumbrances or defects in the title of the Project, and take or refrain from taking such action hereunder as the City may from time to time determine in its sole discretion,

(g) Take all or any action necessary or appropriate to obtain a deed from Borrower for the Land. The Borrower shall be liable to the City for all costs paid or incurred hereunder or paid or incurred to construct and equip the Project, whether the same are paid or incurred pursuant to the provisions of this subparagraph or otherwise, and all payments made or liabilities incurred by the City hereunder of any kind whatever shall be paid by the Borrower to the City upon demand with interest at the default rate as provided in the Note from the date of payment by the City to the date of payment to the City and shall be secured by the Loan Documents. The powers granted herein are for security and are irrevocable, and the Borrower irrevocably constitutes and appoints the City its attorney-in-fact to execute, acknowledge and deliver any instruments and to do and perform any acts in the name and on behalf of the Borrower in connection herewith.

Section 12.2. Waiver: Remedies Cumulative. No failure or delay on the part of the City in exercising any right, power or remedy hereunder or provided for by any of the Loan Documents or instruments evidencing, securing or otherwise relating to the Loan shall operate as a waiver thereof. No single or partial exercise by the City of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy; all rights and remedies shall be deemed cumulative.

SECTION 13

GENERAL PROVISIONS

Section 13.1 Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be governed and interpreted in accordance with the laws of the State of Michigan that are applied to contracts made and to be performed in that state.

Section 13.2. Relationship of Parties. The City and the Borrower acknowledge that the relationship between them created hereby and by the other Loan Documents is that of creditor and debtor and is not intended to be and shall not in any way be construed to be that of a partnership, a joint venture, or principal and agent; and they further acknowledge that any control of or supervision over the construction or operation of the Project by the City or the disbursement of any Loan proceeds to anyone other than the Borrower shall not be deemed to make the City a partner, a joint venturer, a principal, or an agent of the Borrower, but rather shall be deemed to be solely for the purpose of protecting the City's security for the indebtedness of the Borrower to the City. The City has no fiduciary responsibility to the Borrower. The City does not undertake any responsibility to the Borrower to review or inform the Borrower of any matter in connection with any phase of the Borrower's business or operations. The Borrower shall rely entirely upon its own judgment with respect to its business, and any review, inspection, supervision, or information supplied to the Borrower by the City is for the protection of the City and neither the Borrower nor any third party is entitled to rely thereon.

Further, Borrower expressly agrees and acknowledges that approval by City of disbursements does not constitute approval of any governmental function or entity, including but not limited to approval of building permits, code compliance, occupancy, or any other approval that Borrower is obligated to obtain.

Section 13.3. No Third Party Beneficiaries. The parties hereto have entered into this Agreement only for their respective benefits and this Agreement is not intended to, nor shall it create rights in anyone not a party hereto.

Section 13.4. Captions. The titles to the various sections of this Agreement are inserted only for the convenience of the parties and are in no way to be construed as limiting or expanding the content of the paragraphs to which they refer.

Section 13.5. Parties Bound. This Agreement shall be binding upon and shall inure to the benefit of the Borrower and the City and their respective heirs, successors and assigns.

Section 13.6. Assignment by City. The City may assign its rights and interest or any part thereof in this Agreement and all documents and instruments executed pursuant hereto at any time following the completion of construction of the Project without the consent of the Borrower. The City shall provide the Borrower with thirty (30) days notice of any such assignment.

Section 13.7. Notices. Any and all notices required under this Agreement shall be in writing, and shall be served either personally or by certified mail, return receipt requested, with postage thereon fully prepaid, addressed to the parties at their addresses set forth above or such other place or places as either party shall designate by written notice served upon the other party.

Section 13.8. City's Conditions. All conditions of the obligation of the City to make disbursements hereunder are imposed solely and exclusively for the benefit of the City and its assigns and no other person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that the City will refuse to make disbursements in the absence of strict or substantial compliance with any or all thereof, and no other person shall, under any circumstances, be deemed to be a beneficiary of such conditions or of this Agreement, any or all of which may be freely waived in whole or in part by the City at any time if the City, in its sole discretion, deems it advisable to do so.

Section 13.9. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single instrument.

Section 13.10. Severability. If any provision of this Agreement or the application thereof to any person, entity, or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to any other person, entity, or circumstance shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

Section 13.11. Amendments. Neither this Agreement nor any provisions hereof or in any of the Loan Documents may be changed, waived, discharged, or terminated orally, but only by an instrument in writing signed by both parties.

Section 13.12. Time of the Essence. Time is of the essence under this Agreement.

Section 13.13. Relation to Loan Commitment. The terms of this Agreement and the Note supersede any inconsistent terms of the City's Construction Loan commitment to the Borrower; provided, that all obligations of the Borrower under the commitment to pay any fees to the City or any costs and expenses relating to the Loan or the commitment shall survive the execution and delivery of this Agreement and the Note, and any failure of the Borrower to perform any of those obligations shall constitute a default under this Agreement. The meaning of the terms used in any schedule or exhibit are the same as set forth in this Agreement.

Section 13.14. Execution and Delivery of Term Note/Term Loan Documents. This Agreement shall survive the execution and delivery of, and shall govern the Note and the Loan Documents.

BORROWER:
HSD II, LLC

CITY:
City of Muskegon

By: Gary Post
Its: Manager

Date:_____

By: Stephen Gawron
Its: Mayor

Date:_____

By: Ann Marie Meisch
Its: City Clerk

Date:_____

SCHEDULE 1
INSURANCE REQUIREMENTS

Section 1. Insurance. Unless waived in writing by the City, the Borrower shall maintain the following insurance policies issued on forms and by companies satisfactory to City:

- (a) All risk builders risk insurance during the construction of the Project in an amount equal to 100% of the replacement cost of the Project providing all risk coverage on the Project and materials stored on the Property and elsewhere, and including the perils of collapse, damage resulting from error in design or faulty workmanship or materials, and water damage;
- (b) All risk insurance after the substantial completion of the Project, as determined by City, in the amount of at least 80% of the replacement cost of the Project or in such additional amounts as are necessary to keep the Borrower from being a co-insurer or as City may otherwise require, providing all risk coverage on the Project, and, if requested by City, to include the perils of flood, earthquake, business interruption and other risks;
- (c) Comprehensive General Liability Insurance for owners and contractors, including blanket contractual liability, products and completed operations, personal injury (including employees), independent contractors, explosion, collapse and underground hazards for not less than \$2,000,000.00 arising out of any one occurrence or in any increased amount required by City.;
- (d) Comprehensive Automobile Liability Insurance for contractors in amounts not less than carried by the industry generally for bodily injury and for property damage;
- (e) Workers' Compensation Insurance for contractors for statutory limits; and
- (f) Such other insurance as City may reasonably require.

Section 2. Loss Payable to City. All risk Insurance Policies shall have loss made payable to City as mortgagee together with the standard mortgagee clause endorsement.

Section 3. Notice of Cancellation. All insurance policies shall have a provision giving City a ten (10) day prior written notice of cancellation or material change of the coverage.

SCHEDULE 2
CONDITIONS PRECEDENT TO FIRST ADVANCE

The following are the requirements of Section 7.1 of the Agreement:

Section 1. Compliance with Agreement. The Borrower shall present evidence to the City that the Borrower is in compliance with the Agreement, including but not limited to, the disbursement procedures contained in Section 6.

Section 2. Receipt of Documents. Unless waived in writing by the City, the following documents shall be duly executed by authorized persons and delivered to the City in form and substance acceptable to the City:

- (a) Executed Counterparts of the Construction Loan Agreement
- (b) The Note
- (c) The Mortgage shall have been recorded
- (d) The Security Agreement shall have been perfected
- (e) Pledge of the Disbursement account
- (f) The Guarantees
- (g) Articles of Organization certified by the Department of Licensing and Consumer Affairs, State of Michigan
- (h) Good Standing Certificate issued by the Department of Licensing and Consumer Affairs, State of Michigan
- (i) Operating Agreement of the Borrower certified by a Member of the Borrower certifying that the same is true, correct and complete
- (j) Borrower authorization of individual(s) executing documents
- (k) Budget acceptable to the City
- (l) Intentionally deleted
- (m) Intentionally deleted
- (n) Construction Contract, original executed counterpart as shown in the Budget, and Assignment
- (p) Site Plan approval
- (q) Verification of zoning compliance
- (r) Building permit
- (s) Evidence of Compliance with the Construction Lien Law including a Notice of Commencement and Designee Affidavit.
- (t) Appraisal by an appraiser approved by the City
- (u) Evidence of receipt of all applicable licenses
- (w) Certificate(s) of Insurance indicating the Project is covered as required
- (y) Such other documents, certificates, and instruments that may be reasonably requested by the City.

Section 3. Tax and Insurance Escrow Account. An account has been established for the purpose of escrowing tax and insurance payments for the Project, if required.

SCHEDULE 3
CONDITIONS PRECEDENT TO SUBSEQUENT ADVANCES

The following are the requirements of Section 7.2 of the Agreement:

Section 1. Satisfaction of Conditions. All conditions precedent to the First Advance shall have been satisfied.

Section 2. Confirmation of Budget. The Borrower shall confirm that the Budget as approved by the City continues to fairly represent the total costs of the Project or submit a Revised Budget to the City for approval.

Section 3. City Fees. The City's Fees shall be current.

Section 4. Representations and Warranties Remain True. The Borrower shall confirm that the representations and warranties contained in Schedule 5 remain true on the date of the request.

Section 5. No Default. No Event of Default shall then exist.

Section 6. Disbursement Request Submission. The Borrower shall submit a Disbursement Request and required supporting information.

SCHEDULE 4
CONDITIONS PRECEDENT TO FINAL ADVANCE

The following are the requirements of Section 7.3 of the Agreement:

Section 1. Conditions Satisfied. All conditions precedent to previous advances shall have been satisfied.

Section 2. Certificate of Occupancy Issued. The Borrower shall have received and provided the City with evidence of the issuance of approved inspections for the “envelope” for the condominium units to be contained within the Project.

Section 3. Evidence of Project Approval. The Borrower shall have received and provided the City such other evidence of approval of the Project by such Governmental authorities as applicable.

Section 4. Evidence of Completion of Project. The Borrower shall provide the City with evidence of the completion of Project substantially in accordance with Plans, which evidence shall include, but without limitation, the following:

- (a) General Contractor's Affidavit and Indemnity certifying that: (i) the Project has been completed in accordance with the Plans and the Construction Contract, (ii) upon receipt of the amount requested in the Final Disbursement for the General Contractor, the Contractor will have received in full, all payments under the Construction Contract, and all other requirements under that Contract will have been satisfied, (iii) it waives and releases all claims which the Contractor may have against the Borrower, (iv) it indemnifies the Borrower against all damages, costs, liens or losses relating to any claim for compensation by any party for work that was done for or material supplied to the Contractor, and (v) it has fully paid for all labor, materials and equipment provided to it in connection with its work on the Project.
- (b) Copies of all permits that were necessary for the development of Project and the subsequent use of the Project.
- (c) Proof that (i) connections have been “stubbed in” for all utilities necessary for the condominium units to be constructed, including without limitations, sanitary and storm drainage, sewer, gas, electricity, telephone and water, and (ii) all such utilities enter the Project from public streets or easements or from duly recorded private perpetual easements that are for the benefit of and run with the Land.
- (d) A complete set of as-built Plans certified by the Architect.
- (e) Lien waivers from the Contractors and any sub-contractor that furnished materials or labor for the Project and such other documentation sufficient to ensure that there are no mechanic's-material liens with respect to the Project.

- (h) Certificate of insurance confirming coverage with hazard insurance, including business interruption or rental loss, as applicable, and Fire insurance with extended coverage on the completed Project.
- (f) Borrower's Affidavit certifying that all requirements of the Agreement for this Final Advance have been met.

Section 5. Evidence of Costs, Interest, and Fees. The Borrower shall have provided the City with invoices, receipts and other evidence satisfactory to the City that all indirect costs of the Project that are approved, Costs of Construction or City Fees have been paid.

SCHEDULE 5

REPRESENTATIONS AND WARRANTIES

The Borrower hereby makes the following Representations and Warranties to the City, as required by Section 8 of the Agreement.

Section 1. Borrower's Authority. The Borrower is a limited liability company organized and validly existing in good standing in the State of Michigan, has the power and authority to own its assets and to carry out its business as now being conducted, and has the power and authority to execute and deliver, the Note and the other Loan Documents and to do any and all other things required of it under this Agreement.

Section 2. Authorization of Loan Documents. The execution, delivery, and performance of this Agreement, the Note and the other Loan Documents have been duly authorized by requisite corporate action, are not in conflict with the Borrower's Operating Agreement, or of any undertaking to which the Borrower is a party or by which the Borrower is bound or any restriction, law, order, regulation, judgment, decrees, agreement, or instrument to which the Borrower is a party or by which the Borrower is bound and will not result in the creation or imposition of any liens or encumbrances upon the Borrower's property or assets other than as contemplated by this Agreement.

Section 3. Enforceability of Loan Documents. Each of the Loan Documents is the legal valid and binding obligation of the Borrower enforceable against the Borrower in accordance with therein respective terms, except as may be limited by Bankruptcy, insolvency, reorganization, moratorium or other similar laws and equitable principles of general application. The Guarantee(s) is/are the legal valid and binding obligation(s) of the Guarantor(s) enforceable against the Guarantor in accordance with the terms of the Guarantee(s).

Section 4. Enforceability of Construction Documents. The Architect Agreement and the Construction Contract are in full force and effect and have not been amended, modified or terminated. The Borrower is not in default in the performance of its obligations under either the Architect's Agreement or the Construction Contract.

Section 5. Title to Real Estate. Borrower owns good and marketable fee simple title to the Land as evidenced by the insurance issued by the Title Company free and clear of all liens and encumbrances whatsoever other than the Lien and security of the Loan Documents.

Section 6. No Litigation Pending. To the knowledge of the Borrower, there is no action suit, proceeding or investigation at law or in equity before any court or administrative agency or public body pending, threatened against or affecting the Borrower or any Guarantor, nor is there any basis therefor, except as listed on the attachment; provided however, that any such litigation will (i) not materially adversely affect the financial condition of the Borrower or any Guarantor or the ability or power of the Borrower to perform the Borrower's obligations under this Agreement or any Guarantor's obligations under a Guarantee or (ii) affect the validity or enforceability of this Agreement, the Note, or the other Loan Documents.

Section 7. Financial Condition. All financial statements, loan applications, and other documents which have been submitted to the City in connection with the Loan, including without limitation the financial statements of the Borrower, its General Partner, the Guarantors and tenants under any lease, are true, complete, and correct, and, since the dates of such statements, applications, and documents, there have been no changes in the business, prospects, profits, properties, or condition (financial or otherwise) of the Borrower, the Guarantors, or such tenants which individually or in the aggregate have been or are likely to be materially adverse to the financial condition of the Borrower, any Guarantor, or such tenants or the ability of the Borrower or such tenants to perform obligations under this Loan Agreement and the applicable leases. Such financial statements, applications, and documents do not contain any untrue statement of material fact or omit any material fact necessary to make the statements contained therein not misleading.

Section 8. Compliance with Construction Agreements. The Project has been or will be constructed in a manner that conforms with all applicable zoning, planning, building, and other laws and ordinances and regulations of governmental authorities having jurisdiction over the Project; the Project abuts or has access or permanent easements to public roads; all utilities necessary to the construction and operation of the Project are available; the Borrower has obtained all requisite regulatory zoning, planning, building and environmental and other permits necessary for the construction of and the use contemplated for the Project.

Section 9. Taxes. The Borrower has no unpaid taxes which have become delinquent on or before the date of this Agreement.

Section 10. Default. No Event of Default exists under this Agreement and no event has occurred and is continuing that with notice or lapse of time or both would constitute an Event of Default under this Agreement the Note or the Loan Documents.

Section 11. Construction Costs and Funds. The estimated costs of completing the Project set forth in the Budget are in all respects accurate and complete.

Section 12. Ownership of Borrower. The Borrower has provided the City with evidence which accurately describes the ownership of the Borrower and outstanding options and warrants to purchase interests in the Borrower.

Section 13. Contingent Liabilities. The Borrower has not guaranteed, endorsed, assumed, or otherwise become liable for the obligations of any other person, firm or corporation.

SCHEDULE 6

AFFIRMATIVE COVENANTS OF BORROWER

The Borrower shall abide by the following covenants, as required in Section 9 of the Agreement.

Section 1. Maintain Existence in Good Standing. The Borrower shall maintain its existence in the State of Michigan and its qualification and good standing in every other jurisdiction wherein the failure to do so would affect the validity or enforceability of this Agreement, the Note, Mortgage and Security Agreements required to be given by the Borrower hereunder, or would have a material adverse impact on the financial condition, business or operations of the Borrower; continue to conduct and operate its business substantially as presently conducted and operated; and comply with all governmental laws, rules, regulations and orders applicable to it the failure to comply with which would have a material adverse effect on the financial condition, business, or operations of the Borrower or would affect the validity or enforceability of this Agreement, the Note, Security Agreements, Mortgage or other documents required to be given by the Borrower hereunder.

Section 2. Construction. The Borrower has applied for all permits and has broken ground on and shall diligently pursue construction to completion. All construction shall be in compliance with the Plans and Specifications approved by the City. The construction shall be entirely on the Land and will not impermissibly encroach upon or overhang any easement, right-of-way or land of others. Borrower shall construct sidewalks on all appropriate frontage of the Project. The City encourages Borrower to seek bids from minority and women contractors for all facets of the Project.

Section 3. Use of Proceeds. The Borrower shall use the Loan proceeds provided by City solely for the purpose of paying the Approved Costs set forth in the Budget.

Section 4. Additional Funds. If at any time during the term of the Construction Loan, the City deems the amount available for construction will not be sufficient to complete the Project in accordance with the Plans, to pay interest on the Loan and other sums due under the Loan Documents, or if the City determines the Borrower has or will experience a cost over-run in any category on the Budget, that is not offset by reductions in other categories, then the Borrower shall within (10) ten days after notice from City deposit in the Disbursement Account such sums as City may require to remedy the condition.

Section 5. Soil Tests. The City shall be entitled, but not be obligated to conduct from time to time such soil tests, at the sole cost to the City, on the Land as it may determine is necessary or appropriate.

Section 6. Additional Documents. The Borrower agrees upon the request of City to execute any additional documents including but not limited to Security Agreements on any personal property owned by the Borrower included or to be included in the Project as may be required by City to confirm the lien of the Mortgage or other agreement securing the Loan.

Section 7. Changes in Plans. Work. Contracts. The Borrower will obtain the City's prior written approval, which may be withheld in the City's discretion of (i) any change in the Plans that might adversely affect the value of the Project or result in a change in work and/or materials that causes the Budget to be increased; (ii) changes in the terms and conditions of the Architect's Agreement or Contractor's Agreement; (iii) changes in any contracts or any lease or other agreement relating to the Project that adversely affect the economic value of the Project. The City will have a reasonable time to evaluate requests for approval of any changes. The City may approve or disapprove changes in its discretion. In addition to giving its approval, the City may require the Borrower to deposit additional funds in the Disbursement Account to cover anticipated increased costs resulting from the change.

Section 8. Inspections. The Borrower will allow the City and its agents at all times to inspect the Project during the course of construction and the right to examine, copy and audit books, records, accounting data and any other documents of the Borrower and its contractors relating to the property or construction of the Project. If the City determines in good faith that any work or materials do not conform to the Plans or are not in accordance with the requirements of this Agreement, the Borrower shall cause the work to be stopped at the City's request and the City may withhold disbursements until the matter is corrected. The Borrower shall promptly correct the work to the City's satisfaction. The City is under no duty to supervise or inspect the construction or to examine any books or records but may do so solely for the purpose of protecting its security and preserving its rights under this Agreement. No default of the Borrower will be waived by any inspection by the City, nor shall any such inspection impose upon the City any obligation that the work has been or will be in compliance with the Plans and this Agreement or that the construction is free from defective materials or workmanship.

Section 9. Permits. The Borrower will comply, or caused to be complied with, and keep in effect all permits and approvals necessary for construction of the Project and with all existing and future laws, regulations, orders and requirements of governmental or other authorities having jurisdiction over the Project.

Section 10. Payment for Labor and Materials. The Borrower will promptly pay and discharge all claims and liens for labor, materials and services furnished in connection with the construction of the Project. The Borrower will have the right to contest, in good faith, any claim or lien provided that the Borrower does so diligently without prejudice to the City's position. Upon the City's request, the Borrower will provide a bond, cash deposit or other security reasonably satisfactory to the City to protect the City's interest and security in the Project should a contest be unsuccessful.

Section 11. Insurance. The Borrower will maintain in force, until the Loan is paid in full, all insurance required by law and the City, including public liability and builder's risk insurance, under policies approved by the City as to amounts, form, risk, coverage, deductibles, insurer, loss payable and cancellation provisions.

Section 12. Payment of City's Expenses and Fees. The Borrower will pay all of the City's costs and expenses incurred in connection with the making of disbursements under the Loan or any exercise of any of the City's rights or remedies under this Agreement and the Loan Documents,

including but not limited to, fees for audits and inspections, escrow charges, recording charges, legal fees in connection with the making and administering the Loan, and reasonable fees and costs for services not customarily performed by City's employees.

Section 13. Accounting for Project Costs. The Borrower will keep true and correct books and records on a cash basis for the construction of the Project and will maintain adequate reserves for contingencies. The Borrower will submit to the City at the time of each draw request a statement that accurately shows the application of all funds expended to date for the construction of the Project, the source of those funds and the Borrower's best estimate of funds needed to complete the Project.

Section 14. Annual Financial Reports. Until the Loan is repaid, within thirty (30) days after filing, the Borrower shall deliver to the City annual IRS tax returns of the Borrower and the Guarantors. The Borrower shall deliver affidavits in a form satisfactory to the City that the financial condition of the Borrower and its Member(s) has not deteriorated from the condition as of the date of this Agreement. Such information shall be exempt from disclosure pursuant to MCL 15.243, and City promises to keep such information confidential.

Section 15. Examination of Records. In order to facilitate the determination of costs incurred in connection with the Project and the Borrower's compliance with the Loan Documents, the Borrower shall maintain accounting records for the construction of the Project and the subsequent operation of the property separate from the general accounting records the Borrower will maintain in connection with its general business activities or other investments. The Borrower agrees the City may have access to and the right to examine all records of the Borrower which relate directly or indirectly to the Project.

Section 16. Notice of Event of Default. The Borrower will promptly notify the City of any occurrence which constitutes an Event of Default as defined in the Agreement, or which with notice or the passage of time or both would constitute an Event of Default, and of any other occurrence which materially affects the Project or the Borrower's financial condition adversely or the Borrower's ability to comply with its obligations under this Agreement.

Section 17. Taxes, etc. The Borrower shall promptly pay and discharge all taxes, assessments and other governmental charges or levies lawfully imposed upon the premises or any goods, chattels or other personal property owned by the Borrower and located on the premises or with respect to the Project.

Section 18. Notice of Furnishings. The Borrower will provide a Notice of Commencement and all Notices of Furnishing to Transnation Title Insurance Company.

SCHEDULE 7
NEGATIVE COVENANTS OF BORROWER

As required in Section 10 of the Agreement, the Borrower agrees that it will not, without prior written consent of City, which shall not be unreasonably withheld:

Section 1. Liens. Create or permit to exist any lien, mortgage, pledge or other encumbrance on any of its machinery, furniture, fixtures or equipment now owned or hereafter acquired by Borrower, and located on the Property or buildings now owned or hereafter acquired and located on the Property, except liens for taxes not delinquent or being contested.

Section 2. Sale of Assets. Sell, lease or otherwise dispose of any of its assets except in the ordinary course of business.

Section 3. Loans. Make loans or advances to any person or corporation other than in the normal course of business.

Section 4. Guarantees. Guarantee, endorse, assume or otherwise become liable for the obligations of any other person, firm or corporation except by the endorsement of negotiable instruments for deposit or collection in the ordinary course of business.

Section 5. Acquire Stock or Membership Interest. Purchase or otherwise acquire the obligations or the capital stock or membership interest of any other interest in any person, firm or corporation.

Section 6. Borrow Money. Other than the funds advanced by Community Shores Bank, borrow money from any source other than City.

Section 7. Merger. Consolidation. etc. Enter into any merger, consolidation, reorganization, recapitalization, or acquire control of a, or substantially all of the assets of any other persons, firm or corporation.

Section 8. Subordinate Debt. Subordinate any indebtedness owing to Borrower by any person, firm or corporation to indebtedness of such person, firm or corporation owing to any other person, firm or corporation.

Section 9. Redeem Membership Interests. Purchase, redeem or otherwise retire or make any other distribution of its assets, by reduction of capital or otherwise, in respect of any of its capital Membership Interests, other than to provide funds to enable the Members to pay any income tax due on the net income of the Borrower.

Section 10. Distributions. Make distributions to Members at any time that Borrower is in default.

Section 11. Change in Management. Change the Manager of the Borrower.

Section 12. Single Asset Borrower. Acquire any real or personal property other than the Project and Land, and personal property related to the operation and maintenance of the Project and Land; operate any business other than the management and operation of the Project and Land; and maintain its assets in a way difficult to segregate and identify.

Exhibit A
Legal Description

LEGAL DESCRIPTION:

Unit 16, Downtown Muskegon Development Center No. 1, according to the Master Deed dated May 31, 2006, recorded June 2, 2006 in Liber 3702, page 204, and designated as Muskegon County Condominium Subdivision plan number 160, together with rights in general common elements and limited common elements as set forth in the above master deed and as described in Act 59 of the public acts of 1978, as amended, City of Muskegon, Muskegon County, Michigan. Also described as follows:

Commence at the southwest corner of Block 311 (also being the southwest corner of Unit 16 of said downtown Muskegon Development Center No.1) said point also being the point of beginning;

Thence north 38 degrees 13 minutes 53 seconds west along the easterly right of way line of Second Street said right of way line also being the westerly line of said Block 311, a distance of 140.50 feet;

Thence north 51 degrees 38 minutes 09 seconds east along the southerly right of way line of the alley, a distance of 67.74 feet;

Thence south 38 degrees 20 minutes 21 seconds east, a distance of 81.48 feet;

Thence south 51 degrees 39 minutes 39 seconds west, a distance of 8.16 feet;

Thence south 38 degrees 20 minutes 21 seconds east, a distance of 59.05 feet;

Thence south 51 degrees 39 minutes 39 seconds west along the northerly right of way line of Clay Avenue, a distance of 59.84 feet to the point of beginning.

Said Parcel contains 0.21 acres, more or less.

Together with an easement across Heritage Square Townhomes.

Exhibit B
Construction Budget

To Be Provided to City's Counsel and Maintained as a Confidential Document

Date: April 10, 2018

To: Honorable Mayor and City Commissioners

From: City Manager

RE: Reimbursement of Architectural Services to County for Proposed
Convention Center

SUMMARY OF REQUEST:

This is a request to reimburse a percentage of the architectural expenses for the proposed Convention Center to the County.

FINANCIAL IMPACT:

BUDGET ACTION REQUIRED:

STAFF RECOMMENDATION:

Approval.

**LETTER OF UNDERSTANDING BETWEEN
THE COUNTY OF MUSKEGON, THE CITY OF MUSKEGON
AND PARKLAND ACQUISITIONS TWO, LLC**

RECITALS

- The County of Muskegon (“County”) desires to partner with the City of Muskegon (“City”) and Parkland Acquisitions Two, LLC (“Parkland”) (collectively, the “Parties”) to plan and build a convention center in the City and County of Muskegon;
- Parkland owns and operates two (2) hotels in the City of Muskegon, those being commonly known as the Shoreline Inn and the Holiday Inn Muskegon Harbor;
- Parkland is the administrator of the funds collected pursuant to Public Act 59 of 1984, MCL 141.871, *et. seq.*, as the PA 59 Board (the “Board”);
- The City has entered into a contract with Progressive A & E to perform architectural work for the convention center; and
- To such end, and in an effort to memorialize the County’s, the City’s and Parkland’s understanding with regard to such matters, said Parties agree as follows:

(1) The two hotels operated by Parkland have begun and will continue to collect a 4% per room assessment charge pursuant to PA 59 (the “PA 59 Funds”).

(2) The Board will transfer the PA 59 Funds to the County for the purpose of tourism marketing of the proposed convention center.

(3) The County will create separate Revenue and Expenditure funds for deposit and remittance of the PA 59 Funds.

(4) From the PA 263 Funds held by the County, the County will remit to the City an amount equal to the monthly invoices for architecture and engineering (“A&E”) from the contracted A&E firm, Progressive AE, for this phase of convention center development.

(5) These payments to the City will not exceed the full cost of the A&E engagement, that being \$832,800, plus any reimbursable expenses as mutually agreed between the Parties, with it being understood that the contract between the City and Progressive A&E provides for interest at 1% per month on invoices not paid within 30 days (the “interest”). The City shall operate in good faith to pay such invoices within 30 days. Should the City not pay any such invoice within 30 days and be charged interest that is attributable to any fault or delay by the County, the County will reimburse the City for the interest.

(6) The Parties hereto acknowledge and understand that they intend to negotiate and enter into further agreements, including, but not limited to, a Development Agreement for the renovation of the hotel known as the Holiday Inn Muskegon Harbor.

IN WITNESS WHEREOF, this Letter of Understanding has been executed as between the parties above referenced as of the dates reflected below.

THE MUSKEGON COUNTY BOARD OF
COMMISSIONERS

Dated: _____, 2018

By: _____
Benjamin Cross, its Chairperson

As approved by the Muskegon County Board of Commissioners on _____, 2018.

THE CITY OF MUSKEGON

Dated: _____, 2018

By: _____
Stephen Gawron, its Mayor

As approved by the Muskegon City Commission on _____, 2018.

PA 59 BOARD

Dated: _____, 2018

By: _____
, its Chairperson

As approved by the Muskegon PA 59 Board of Commissioners on _____, 2018.

PARKLAND ACQUISITIONS TWO, LLC

Dated: _____, 2018

By: _____
, its

Date: April 10, 2018
To: Honorable Mayor and City Commissioners
From: DPW-Engineering
RE: Consideration of Bids for:
Paving of Parking Lot, Jefferson at Western
(B-253)(High Point Flats)

SUMMARY OF REQUEST:

To award above referenced project to *Jackson-Merkey Contractors, Inc.* since they were the lowest responsible bidder with a total bid price of \$214,559.50 (see attached bid tabulation).

FINANCIAL IMPACT:

The construction cost of \$214,559.50 plus 15% for construction engineering costs

BUDGET ACTION REQUIRED:

Revise the budgeted amount via the 3rd quarterly reforecast to more accurately reflect the projected costs. Project is included in the original 2017/2018 capital budget.

STAFF RECOMMENDATION:

Award the contract to Jackson-Merkey Contractors, Inc. for a bid price of \$214,559.50.

COMMITTEE RECOMMENDATION:



City of Muskegon

B 253 Jefferson & Western Parking Lot
Bid Tabulation

= appearnt low bidder

Engineer: Joel Brookens Date: 03/22/18

West Michigan's Shoreline City www.shorelinecity.com					Engineers Est.		Jackson-Merkey Cont. Muskegon		Accurate Excavators Muskegon		McCormick Sand Twin Lakes		Weick Brothers Exc. Hopkins		
Engineer: Joel Brookens Date: 03/22/18															
Pay Item		Description	Supplemental Description	Qty	Unit	Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total
1	1500001	Mobilization, Max	\$20,000.00 Max.	1	LSUM	\$ 10,000.00	\$ 10,000.00	\$ 4,000.00	\$ 4,000.00	\$ 4,002.85	\$ 4,002.85	\$ 13,500.00	\$ 13,500.00	\$ 15,000.00	\$ 15,000.00
2	2020004	Tree, Rem, 6 inch to 18 inch		8	Ea	\$ 150.00	\$ 1,200.00	\$ 100.00	\$ 800.00	\$ 100.00	\$ 800.00	\$ 50.00	\$ 400.00	\$ 125.00	\$ 1,000.00
3	2027050		Hedge, Rem	40	ft	\$ 12.50	\$ 500.00	\$ 7.70	\$ 308.00	\$ 6.00	\$ 240.00	\$ 12.00	\$ 480.00	\$ 65.00	\$ 2,600.00
4	2037050		Dr Structure, Rem, Modified	4	Ea	\$ 350.00	\$ 1,400.00	\$ 205.00	\$ 820.00	\$ 315.00	\$ 1,260.00	\$ 550.00	\$ 2,200.00	\$ 125.00	\$ 500.00
5	2040020	Curb and Gutter, Rem		280	Ft	\$ 8.00	\$ 2,240.00	\$ 3.40	\$ 952.00	\$ 7.00	\$ 1,960.00	\$ 6.00	\$ 1,680.00	\$ 25.00	\$ 7,000.00
6	2040035	Guardrail, Rem		55	Ft	\$ 2.00	\$ 110.00	\$ 8.20	\$ 451.00	\$ 7.00	\$ 385.00	\$ 12.00	\$ 660.00	\$ 50.00	\$ 2,750.00
7	2040045	Masonry and Conc Structure, Rem		20	Cyd	\$ 70.00	\$ 1,400.00	\$ 115.00	\$ 2,300.00	\$ 50.00	\$ 1,000.00	\$ 150.00	\$ 3,000.00	\$ 30.00	\$ 600.00
8	2040055	Sidewalk, Rem		65	Syd	\$ 8.00	\$ 520.00	\$ 8.40	\$ 546.00	\$ 12.00	\$ 780.00	\$ 10.00	\$ 650.00	\$ 20.00	\$ 1,300.00
9	2040070	Utility Pole, Rem		1	Ea	\$ 200.00	\$ 200.00	\$ 335.00	\$ 335.00	\$ 300.00	\$ 300.00	\$ 400.00	\$ 400.00	\$ 125.00	\$ 125.00
10	2047011		Pavt, Rem, Modified	2407	Syd	\$ 5.00	\$ 12,035.00	\$ 4.40	\$ 10,590.80	\$ 4.00	\$ 9,628.00	\$ 3.50	\$ 8,424.50	\$ 15.00	\$ 36,105.00
11	2050010	Embankment, CIP		80	Cyd	\$ 8.00	\$ 640.00	\$ 5.20	\$ 416.00	\$ 10.00	\$ 800.00	\$ 6.00	\$ 480.00	\$ 10.00	\$ 800.00
12	2050016	Excavation, Earth		1703	Cyd	\$ 8.00	\$ 13,624.00	\$ 7.30	\$ 12,431.90	\$ 9.00	\$ 15,327.00	\$ 8.00	\$ 13,624.00	\$ 20.00	\$ 34,060.00
13	2080020	Erosion Control, Inlet Protection, Fabric Drop		6	Ea	\$ 100.00	\$ 600.00	\$ 115.00	\$ 690.00	\$ 100.00	\$ 600.00	\$ 95.00	\$ 570.00	\$ 60.00	\$ 360.00
14	2090001	Project Cleanup		1	LSUM	\$ 500.00	\$ 500.00	\$ 230.00	\$ 230.00	\$ 1,000.00	\$ 1,000.00	\$ 100.00	\$ 100.00	\$ 2,500.00	\$ 2,500.00
15	3020016	Aggregate Base, 6 inch		4450	Syd	\$ 6.00	\$ 26,700.00	\$ 6.70	\$ 29,815.00	\$ 6.00	\$ 26,700.00	\$ 10.00	\$ 44,500.00	\$ 8.50	\$ 37,825.00
16	4020600	Sewer, CI E, 12 inch, Tr Det B		135	Ft	\$ 40.00	\$ 5,400.00	\$ 22.00	\$ 2,970.00	\$ 35.00	\$ 4,725.00	\$ 29.00	\$ 3,915.00	\$ 13.00	\$ 1,755.00
17	4021204	Sewer Tap, 12 inch		1	Ea	\$ 300.00	\$ 300.00	\$ 430.00	\$ 430.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 250.00	\$ 250.00
18	4037050		Catch Basin 2 FT ID Special Detail	2	Ea	\$ 1,100.00	\$ 2,200.00	\$ 1,120.00	\$ 2,240.00	\$ 1,500.00	\$ 3,000.00	\$ 1,100.00	\$ 2,200.00	\$ 850.00	\$ 1,700.00
19	4037050		Catch Basin Specail Detail	3	Ea	\$ 1,500.00	\$ 4,500.00	\$ 825.00	\$ 2,475.00	\$ 775.00	\$ 2,325.00	\$ 500.00	\$ 1,500.00	\$ 500.00	\$ 1,500.00
20	4037050		Dr Structure Cover, Type B, Modified	1	Ea	\$ 600.00	\$ 600.00	\$ 335.00	\$ 335.00	\$ 650.00	\$ 650.00	\$ 1,000.00	\$ 1,000.00	\$ 500.00	\$ 500.00
21	4037050		Dr Structure Cover, Type D, Modified	3	Ea	\$ 650.00	\$ 1,950.00	\$ 515.00	\$ 1,545.00	\$ 600.00	\$ 1,800.00	\$ 1,040.00	\$ 3,120.00	\$ 600.00	\$ 1,800.00
22	5010033	HMA, 13A		475	Ton	\$ 75.00	\$ 35,625.00	\$ 71.50	\$ 33,962.50	\$ 77.00	\$ 36,575.00	\$ 70.20	\$ 33,345.00	\$ 70.00	\$ 33,250.00
23	5010034	HMA, 36A		350	Ton	\$ 80.00	\$ 28,000.00	\$ 87.50	\$ 30,625.00	\$ 95.00	\$ 33,250.00	\$ 85.92	\$ 30,072.00	\$ 72.50	\$ 25,375.00
24	6020054	Conc Pavt, Misc, Nonrein, 8 inch		35	Syd	\$ 50.00	\$ 1,750.00	\$ 39.00	\$ 1,365.00	\$ 42.00	\$ 1,470.00	\$ 48.00	\$ 1,680.00	\$ 38.00	\$ 1,330.00
25	8017011		Driveway, Nonrein Conc, 6 Inch, Modified	75	Syd	\$ 40.00	\$ 3,000.00	\$ 27.50	\$ 2,062.50	\$ 30.00	\$ 2,250.00	\$ 38.00	\$ 2,850.00	\$ 27.00	\$ 2,025.00
26	8020038	Curb and Gutter, Conc, Det F4		920	Ft	\$ 12.00	\$ 11,040.00	\$ 12.00	\$ 11,040.00	\$ 13.00	\$ 11,960.00	\$ 15.00	\$ 13,800.00	\$ 11.70	\$ 10,764.00
27	8030044	Sidewalk, Conc, 4 inch		1970	Sft	\$ 3.00	\$ 5,910.00	\$ 3.30	\$ 6,501.00	\$ 3.50	\$ 6,895.00	\$ 4.25	\$ 8,372.50	\$ 3.25	\$ 6,402.50
28	8030046	Sidewalk, Conc, 6 inch		500	Sft	\$ 4.00	\$ 2,000.00	\$ 3.60	\$ 1,800.00	\$ 4.00	\$ 2,000.00	\$ 4.50	\$ 2,250.00	\$ 3.50	\$ 1,750.00
29	8037001		Decorative Block Wall Special Detail	335	Ft	\$ 80.00	\$ 26,800.00	\$ 140.00	\$ 46,900.00	\$ 150.00	\$ 50,250.00	\$ 198.00	\$ 66,330.00	\$ 130.00	\$ 43,550.00
30	8037010		Sidewalk, Conc, 6 inch, Colored	120	Sft	\$ 10.00	\$ 1,200.00	\$ 4.90	\$ 588.00	\$ 5.25	\$ 630.00	\$ 8.00	\$ 960.00	\$ 4.75	\$ 570.00
31	8037010		Sidewalk, conc, 6 inch, Colored with Acidic Stain	10	Sft	\$ 20.00	\$ 200.00	\$ 51.00	\$ 510.00	\$ 55.00	\$ 550.00	\$ 54.00	\$ 540.00	\$ 50.00	\$ 500.00
32	8100370	Post, Steel, 2 lb		36	Ft	\$ 5.00	\$ 180.00	\$ 6.10	\$ 219.60	\$ 6.50	\$ 234.00	\$ 6.00	\$ 216.00	\$ 15.00	\$ 540.00
33	8100371	Post, Steel, 3 lb		24	Ft	\$ 6.00	\$ 144.00	\$ 5.10	\$ 122.40	\$ 5.50	\$ 132.00	\$ 5.00	\$ 120.00	\$ 20.00	\$ 480.00
34	8100404	Sign, Type IIIA		15	Sft	\$ 20.00	\$ 300.00	\$ 12.00	\$ 180.00	\$ 21.00	\$ 315.00	\$ 12.00	\$ 180.00	\$ 30.00	\$ 450.00
35	8110231	Pavt Mrkg, Waterborne, 4 inch, White		2130	Ft	\$ 1.00	\$ 2,130.00	\$ 0.30	\$ 639.00	\$ 0.33	\$ 702.90	\$ 0.30	\$ 639.00	\$ 0.25	\$ 532.50
36	8117001		Pavt Mrkg, Waterborne, 4 inch, Blue	220	Ft	\$ 1.50	\$ 330.00	\$ 0.30	\$ 66.00	\$ 0.33	\$ 72.60	\$ 0.30	\$ 66.00	\$ 0.25	\$ 55.00
37	8117050		Pavt Mrkg, Waterborne, Handicap, Sym, Blue	4	Ea	\$ 150.00	\$ 600.00	\$ 25.50	\$ 102.00	\$ 28.00	\$ 112.00	\$ 25.00	\$ 100.00	\$ 20.00	\$ 80.00
38	8120170	Minor Traf Devices		1	LSUM	\$ 500.00	\$ 500.00	\$ 410.00	\$ 410.00	\$ 500.00	\$ 500.00	\$ 5,800.00	\$ 5,800.00	\$ 3,000.00	\$ 3,000.00
39	8120250	Plastic Drum, High Intensity, Furn		25	Ea	\$ 30.00	\$ 750.00	\$ 12.00	\$ 300.00	\$ 13.00	\$ 325.00	\$ 12.00	\$ 300.00	\$ 30.00	\$ 750.00
40	8120251	Plastic Drum, High Intensity, Oper		25	Ea	\$ 1.00	\$ 25.00	\$ 1.00	\$ 25.00	\$ 1.25	\$ 31.25	\$ 1.00	\$ 25.00	\$ 30.00	\$ 750.00
41	8120352	Sign, Type B, Temp, Prismatic, Special, Furn		48	Sft	\$ 7.00	\$ 336.00	\$ 3.10	\$ 148.80	\$ 3.50	\$ 168.00	\$ 3.00	\$ 144.00	\$ 45.00	\$ 2,160.00
42	8120353	Sign, Type B, Temp, Prismatic, Special, Oper		48	Sft	\$ 1.00	\$ 48.00	\$ 0.25	\$ 12.00	\$ 0.30	\$ 14.40	\$ 0.25	\$ 12.00	\$ 45.00	\$ 2,160.00
43	8160062	Topsoil Surface, Furn, 4 inch		100	Syd	\$ 3.00	\$ 300.00	\$ 4.90	\$ 490.00	\$ 8.00	\$ 800.00	\$ 12.00	\$ 1,200.00	\$ 10.00	\$ 1,000.00
44	8167011		Hydroseeding	100	Syd	\$ 1.00	\$ 100.00	\$ 2.00	\$ 200.00	\$ 1.50	\$ 150.00	\$ 1.00	\$ 100.00	\$ 35.00	\$ 3,500.00
45	8267021		Flowable Fill, Non Structural	7	Cyd	\$ 200.00	\$ 1,400.00	\$ 230.00	\$ 1,610.00	\$ 350.00	\$ 2,450.00	\$ 1.00	\$ 7.00	\$ 300.00	\$ 2,100.00
Total						\$ 209,287.00		\$ 214,559.50		\$ 229,620.00		\$ 272,012.00		\$ 293,104.00	

Date: 4/10/2018
To: Honorable Mayor and City Commissioners
From: Department of Public Works
RE: City Hall Irrigation Replacement

SUMMARY OF REQUEST:

Award the replacement of the irrigation system at City Hall to Ashley Irrigation. Four contractors were contacted, and two supplied bids as follows.

Ashley Irrigation	\$21,248.13
Lake Harbor Gardens	\$26,500

FINANCIAL IMPACT:

\$21,248.13

BUDGET ACTION REQUIRED:

None. The project is included in the capital project list in the 2017/2018 budget.

STAFF RECOMMENDATION:

Award the project to the low bidder, Ashley Irrigation.

Date: April 10, 2018
To: Honorable Mayor and City Commissioners
From: Ann Marie Meisch, City Clerk
RE: Community Relations Committee Appointment

SUMMARY OF REQUEST: To accept the resignations and appointment recommendations of the Community Relations Committee as follows:

Income Tax Board of Review:

Resignation – Catherine Young

Appointment – Elizabeth Sherman

Construction Cod Board of Appeals:

Resignation – Vicky Luthy

Appointment – Michael Eslick

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To accept the recommendation.